

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway, *et al.*,

Plaintiffs,

v.

City of Virginia Beach, *et al.*,

Defendants

Civil Action No. 2:18-cv-0069

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

PLAINTIFFS' EXHIBIT 5

Deposition Transcript of Dr. Quentin Kidd



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Transcript of Quentin Kidd, Ph.D.

Date: September 25, 2019

Case: Holloway, et al. -v- City of Virginia Beach, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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LATASHA HOLLOWAY and :
GEORGIA ALLEN, :
Plaintiffs, : CASE NO.
v. : 2:18cv00069
CITY OF VIRGINIA BEACH, et al., :
Defendants. :

-----x

Deposition of QUENTIN KIDD, Ph.D.
Virginia Beach, Virginia
Wednesday, September 25, 2019
9:35 a.m.

Job No. 261911

Pages 1 - 152

Reported by: Penny C. Wile, RPR, RMR, CRR

Transcript of Quentin Kidd, Ph.D.
Conducted on September 25, 2019

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1 Deposition of QUENTIN KIDD, Ph.D., held at
2 the offices of:

3
4
5 VIRGINIA BEACH CITY ATTORNEY
6 2401 Courthouse Drive
7 Municipal Center, Building One
8 Room 260
9 Virginia Beach, VA 23456
10 (757) 385-4351

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17 Pursuant to Notice, before Penny C. Wile,
18 RPR, RMR, CRR, Notary Public of the Commonwealth
19 of Virginia.

Transcript of Quentin Kidd, Ph.D.
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1 A P P E A R A N C E S
2 ON BEHALF OF THE PLAINTIFFS, LATASHA HOLLOWAY
3 AND GEORGIA ALLEN:

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10 and

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Transcript of Quentin Kidd, Ph.D.
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A P P E A R A N C E S

ON BEHALF OF THE DEFENDANTS, CITY OF VIRGINIA
BEACH, ET AL.:

CHRISTOPHER S. BOYNTON, ESQUIRE

GERALD L. HARRIS, ESQUIRE

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Transcript of Quentin Kidd, Ph.D.
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P R O C E E D I N G S

Whereupon,

QUENTIN KIDD, Ph.D.,

after having been first duly sworn, was examined
and did testify under oath as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFFS:

BY MS. HARLESS:

Q. Good morning, Mr. Kidd. My name is
Annabelle Harless, and I'm an attorney for the
plaintiffs in this case. And I'm going to be
asking you some questions today.

A. Okay.

Q. Have you ever been deposed before?

A. This is the first time.

Q. Okay. So we'll go over a few ground
rules. And you can let me know if you have any
questions.

A. Okay.

Q. The court reporter is writing down
everything that we say here today. So that she
can get everything on the record, make sure that
you wait for me to finish asking my questions

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1 before you start answering, and I'll wait for you
2 to finish your answer before I ask you the next
3 question, so that we don't talk over one another.

4 A. Okay.

5 Q. The court reporter can only record verbal
6 responses, so it's important that you don't nod
7 or -- that you answer yes or no or with a verbal
8 answer.

9 A. Okay.

10 Q. And we can take a break at any time. I
11 only ask that you answer the question that's
12 pending before we take a break.

13 A. Okay.

14 Q. Does that make sense?

15 A. Yep.

16 Q. Could you please state your full name for
17 the record?

18 A. Quentin Kidd. No middle initial.

19 Q. Do you understand you're under oath today?

20 A. I do.

21 Q. And is there any reason why you can't
22 truthfully answer my questions today?

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1 A. None.

2 Q. When were you first retained as an expert
3 witness in this case?

4 A. Sometime mid-July. I don't know that I
5 can remember the exact date. I think July 12th,
6 actually.

7 Q. July 12th, 2019?

8 A. Correct. 2019.

9 Q. Were you contacted before that or is that
10 the date you signed a retainer agreement?

11 A. I was probably contacted two or three days
12 before that, had a phone conversation with Chris,
13 and --

14 Q. Don't tell me about the content of that
15 conversation.

16 A. No. No. I'm just saying I had a phone
17 conversation with Chris. And, then, some point --
18 some days later I signed a contract. I can't tell
19 you the exact dates.

20 Q. What is your understanding of the scope of
21 the work you were assigned to do in this case?

22 A. To review two expert reports, from

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1 Dr. Spencer and Dr. Lichtman, and provide
2 responses to those.

3 Q. Anything else that you can think of?

4 A. Well, I had to agree to be available
5 throughout the entirety of this case, so...

6 Q. Have you signed a retention agreement
7 regarding your work on this case?

8 A. That's what the agreement was, right?
9 Isn't that --

10 Q. I'm asking you if you've ever signed a
11 retention agreement?

12 A. As a part of this case?

13 Q. Yes.

14 A. The contract that I signed? Is that what
15 you mean?

16 Q. Most likely, yes.

17 A. Yes. Okay. Yes.

18 Q. Okay. And do you still have a copy of
19 that retention agreement?

20 A. I do.

21 Q. Do you submit invoices regarding your work
22 in this case?

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1 A. I do. I have.

2 Q. Who do you submit those to?

3 A. I submitted them to Chris or I submitted
4 one. I've only submitted one invoice.

5 Q. Has that invoice been paid?

6 A. Yes.

7 Q. And you're being paid \$225 per hour for
8 review and preparation of your report, correct?

9 A. Correct.

10 Q. About how many hours have you spent
11 working on this case so far?

12 A. Sixty. Somewhere between 60 and 70.

13 Q. And how much have you been paid for your
14 work on this case so far?

15 A. Around \$20,000.

16 Q. And you're billing about \$275 per hour for
17 your deposition time and attendance, correct?

18 A. Correct.

19 Q. So you'll be billing for your time at this
20 deposition today, right?

21 A. Correct.

22 Q. Are you going to bill for your time to

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1 travel to this deposition?

2 A. Mileage. I live locally, so there is
3 really little time involved in traveling.

4 Q. Where do you live?

5 A. I live in Newport News.

6 Q. Is there any kind of cap on your fees?

7 A. Not that I'm aware of. I don't remember
8 there being a cap in the agreement that I signed.

9 Q. You are currently a Professor of Political
10 Science at Christopher Newport University,
11 correct?

12 A. Correct.

13 Q. What is your current salary at Christopher
14 Newport University?

15 A. 100 and about 57,000. I'm actually a
16 Dean. So the salary is a little bit higher
17 because I'm a Dean.

18 Q. And you're, also, currently the Director
19 of the Wason Center for Public Policy?

20 A. Wason.

21 Q. The Wason Center for Public Policy?

22 A. Correct.

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1 Q. What is your current compensation at the
2 Wason Center?

3 A. I receive no compensation. It's just a
4 part of my -- my regular academic assignment at
5 the University.

6 MR. HARRIS: Dr. Kidd, will you spell
7 Wason for us?

8 A. W-A-S-O-N. It's pro -- it's Wason instead
9 of Wayson because the Wasons are a Northeastern
10 Massachusetts family that pronounces it Wason.

11 Q. Do you have any other sources of income
12 besides your salary from Christopher Newport
13 University or your work as an expert in this case?

14 A. I do not.

15 Oh. You know what? Let me back up. I
16 own a rental property, so I do -- I do have income
17 that comes from that rental property.

18 Q. And you've never been an expert witness
19 before, correct?

20 A. Never.

21 Q. Why did you decide to become an expert
22 witness in this case?

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1 A. Because it's a local -- it's a local case.
2 So I've spent -- I've been at Christopher Newport
3 University for about 23 years. I've spent nearly
4 25 years studying Virginia politics and Hampton
5 Roads politics, so I'm very familiar with, you
6 know, politics in the region, and I do a lot of
7 studying and analysis on it, and it's a local
8 case, so I had some expertise to lend to it.

9 Q. Since you've never been an expert before,
10 how did you decide to set your hourly rates at 225
11 and \$275 an hour?

12 A. So there was a -- there was a case --
13 there was a situation about four or five years ago
14 where I had -- I had started to work with an
15 attorney in Roanoke on a case that never get filed
16 or anything like that. We just began exploring
17 whether there was a case. It was a state-related
18 case. And in conversations with them, that rate
19 is what we were going to agree to if we went
20 forward. We never went forward. And so I used
21 that as my baseline.

22 Q. What year was that?

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1 A. This would have been -- I think this would
2 have been -- this would have to have been five,
3 six years ago.

4 Q. And what was that case about?

5 A. It was about -- it was a redistricting
6 case. And the attorney that came to me to talk to
7 me about it came to me because I had -- I had
8 organized a redistricting competition in Virginia
9 among high school -- college students, and so he
10 thought that I had some knowledge of the
11 redistricting process in Virginia.

12 So it really -- it really was several
13 hours of conversation that never went anywhere,
14 so...

15 Q. The case was not filed?

16 A. No. No.

17 Q. Was the case challenging an at-large
18 method of election?

19 A. No.

20 Q. Did the case have anything to do with
21 Section 2 of the Voting Rights Act?

22 A. It would have, yes.

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1 Q. Can you explain how it would have?

2 A. Well, it was a -- it was a minority -- it
3 was a majority minority -- it was a case that
4 looked at whether there were enough -- it would
5 have been a case that would have looked at whether
6 there were enough African American voters in
7 Roanoke to create a majority minority district at
8 the state level.

9 Q. For the General Assembly?

10 A. For the General Assembly, House of
11 Delegates.

12 Q. Was there currently a majority minority
13 district in that area?

14 A. No.

15 Q. So the lawsuit would have been a challenge
16 under Section 2 of the Voting Rights Act?

17 A. If it had been filed, yes.

18 Q. Did you -- in your discussions about that
19 case, did you ever perform any analyses about
20 racially polarized voting?

21 A. No. It never got -- literally, it
22 never -- it went -- it never went to the point of

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1 any analysis being done at all. It never went
2 beyond, literally, discussions.

3 Q. Why not?

4 A. Because -- I don't know, honestly. It was
5 their decision not to do it. They just -- my
6 discussions with them involved would I be willing
7 to support them in that case. This is the larger
8 parameters that they were looking at. And that
9 was it. I mean, it never went forward.

10 Q. And you mentioned earlier that you
11 organized a redistricting competition among
12 students?

13 A. Correct.

14 Q. Could you tell me a little bit more about
15 that?

16 A. Yeah. It was -- so it was an educational
17 endeavor. We were trying to encourage students to
18 pay attention to redistricting and understand the
19 redistricting process in Virginia. And so we --
20 we -- we worked -- we worked -- we, literally,
21 tried to get every college and university in
22 Virginia to put forward a team. And we wanted

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1 them -- each team to draw House of Delegate and
2 State Senate maps in time for the General Assembly
3 to be able to consider those maps when they were
4 working on redistricting.

5 And so we ended up raising I don't
6 remember how much money because we wanted to give
7 prizes for the first and second place winners of
8 those -- of that competition. So we probably had
9 17 teams from different colleges and universities
10 around Virginia that submitted maps of -- either
11 one map or sets of maps. And we had two judges,
12 whose names I'm drawing a blank on now. Mann.
13 Anyway, I'm totally drawing blanks on their names.

14 But, anyway, we had these two judges who
15 judged the maps and declared winners. There was a
16 set of criteria that we had sent the teams. And
17 some of the teams actually -- some of the teams
18 actually were invited to testify in front --
19 before the General Assembly about their maps. So
20 it was totally an educational project.

21 Q. What were the criteria?

22 A. I do not remember. The criteria were

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1 essentially the criteria the General Assembly had
2 laid out for its redistricting competition or --
3 for its redistricting process, but I can't tell
4 you the exact criteria here.

5 Q. As part of that competition, did you do
6 any kinds of training for students on the Voting
7 Rights Act?

8 A. No. What we did is we required every team
9 to have a faculty mentor. And it was up to the
10 faculty mentor to provide any teaching or guidance
11 that the team needed.

12 Q. And you didn't submit a map as part of
13 that competition, correct?

14 A. I did not, no.

15 Q. And you didn't perform any kind of
16 racially polarized voting analyses?

17 A. No. I didn't perform any analysis.

18 Q. A moment ago we were talking about the
19 potential Roanoke case, correct? Who was the
20 attorney that contacted you about that case?

21 A. I knew you were going to ask that. I
22 cannot remember. I cannot remember his name. He

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1 was a recently retired attorney. I just don't
2 remember his name.

3 Q. Do you remember where he was based?

4 A. I think Roanoke.

5 Q. And do you remember what he said when he
6 reached out to you?

7 A. He reached out to me because of the
8 redistricting competition. So that was his reason
9 for reaching out to me.

10 Q. Did the attorney contact you on behalf of
11 a political party?

12 A. No.

13 Q. Do you know why he was interested in
14 bringing the case?

15 A. I actually don't. I just -- I just can
16 tell you what he -- he reached out to me because
17 of that redistricting competition. We had a
18 couple hours of conversation back and forth about
19 what he was thinking about trying to do, and that
20 was it. Several months of no communication, and
21 then he let me know that they weren't going
22 forward with it.

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1 Q. Did you put him in contact with anyone
2 else about the case?

3 A. No.

4 Q. And when you said he let me know they
5 weren't going forward with it, was there anyone
6 else associated with that matter besides him?

7 A. Well, I say they because I'm thinking of
8 his law firm.

9 Q. Okay. Did you speak with anyone besides
10 the defendants' attorneys in preparation for this
11 deposition?

12 MR. HARRIS: I object to the extent it
13 calls for litigation work product with other
14 experts.

15 Q. Yes or no?

16 A. Only people that were involved in the
17 case. I never talked about it with anybody that
18 wasn't involved in the case.

19 Q. So you communicated with Peter Morrison
20 about this deposition?

21 MR. HARRIS: Object as attorney work
22 product and litigation work product. And I'm

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1 instructing him not to answer that question.

2 MR. HEBERT: Can we go off the record for
3 a second?

4 (A discussion was held off the record.)

5 (A recess was taken.)

6 Q. Outside of the presence of counsel have
7 you ever communicated in any way with Peter
8 Morrison?

9 A. No.

10 Q. Ever? Not even about this case?

11 A. (Moved head from side to side.)

12 MR. BOYNTON: You need to respond
13 verbally.

14 A. No. The first time I ever communicated
15 with Peter Morrison was in a group conversation.

16 Q. Outside of the presence of counsel, have
17 you ever communicated in any way with Kimball
18 Brace?

19 A. No.

20 Q. Did you communicate in any way with any of
21 your colleagues at Christopher Newport University
22 about this case?

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1 A. No.

2 Let me back up. I did have to get
3 permission from my Provost to be able to be a
4 consultant on this case, and so I did have to ask
5 for permission. So if you consider that
6 communication about the case, then the answer is
7 yes, but it was just to get permission to do this.

8 Q. And besides that, no other communication
9 about this case?

10 A. No.

11 Q. Have you ever talked with any Virginia
12 Beach City Council members or the Mayor about this
13 case?

14 A. No.

15 Q. Besides attorneys for the defendants, have
16 you ever talked to anyone else about this case?

17 A. Besides attorneys for the defendants?

18 MR. BOYNTON: He's already testified about
19 who he talked to, counselor.

20 Q. Besides those conversations with attorneys
21 for the defendants or conversations where counsel
22 and experts were present, have you ever talked to

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1 anyone else about this case?

2 A. Yes.

3 Q. Who?

4 A. My wife, for one. And I had a -- this
5 is -- so I --

6 MR. BOYNTON: I'll put on the record there
7 is a non-testifying expert consultant that we have
8 spoken with. I don't believe that is
9 discoverable. He can answer that, whether he
10 talked to that person or not. I'd prefer to keep
11 the rest of it under the privilege.

12 MS. HARLESS: So I'm just going to ask him
13 who the consultant was and not ask anything else.

14 MR. BOYNTON: I understand.

15 Q. Have you -- my understanding is that there
16 is a non-testifying consultant in this case,
17 correct?

18 A. Correct.

19 Q. Who is that individual?

20 A. Chuck Bullock.

21 Q. Can you spell that name?

22 A. B-U-L-L-O-C-K.

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1 Q. Besides Chuck Bullock and your wife and
2 attorneys for the defendants and any conversations
3 you had with experts and attorneys present, have
4 you talked to anyone else about this case?

5 A. No.

6 Q. Have you reviewed the expert report
7 prepared by Peter Morrison for defendants in this
8 case?

9 A. I mean, I did look over it. I didn't
10 review -- I didn't in such detail that I could
11 repeat it to you line-by-line here.

12 Q. But you read it?

13 A. Yes.

14 Q. Did you read the original expert report of
15 plaintiffs' expert, Tony Fairfax, in this case?

16 A. I reviewed it. I would not say that I
17 read it. I reviewed it.

18 Q. What do you mean when you say you reviewed
19 it?

20 A. Something similar to the graduate school
21 skim, if you're familiar with that.

22 Q. So you skimmed it?

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1 A. Yes.

2 Q. Have you reviewed any of the three
3 rebuttal reports prepared by plaintiffs' experts
4 in this case?

5 MR. HARRIS: Object to foundation and
6 form.

7 You can answer.

8 Q. Do you understand the question?

9 A. Just repeat.

10 Q. Have you reviewed any of the three
11 rebuttal reports prepared by plaintiffs' experts
12 in this case?

13 A. The Lichtman report and the Spencer
14 report?

15 Q. The rebuttal -- the second report?

16 A. Yes.

17 Q. You have?

18 A. Yes.

19 Q. Did you also read the second report by
20 Tony Fairfax?

21 A. Skimmed.

22 Q. Did you skim the Spencer report?

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1 A. I read the Spencer report.

2 Q. Did you skim the Lichtman report?

3 A. I read the Lichtman report.

4 Q. When did you read the Spencer report?

5 A. Probably the evening, into the next day,
6 after it was sent -- sent to me by Chris.

7 Q. So around August 26th?

8 A. (Moved head up and down.)

9 Q. When did you --

10 A. That would be correct, yeah.

11 Q. When did you read the Lichtman report?

12 A. Similar timeframe. I mean, I read both of
13 those reports within the day or two after they
14 were sent.

15 Q. Besides reviewing plaintiffs' experts'
16 rebuttal reports, have you done any other work for
17 the defendants on this case since submitting your
18 report?

19 A. No.

20 Q. Do you envision doing any analysis of the
21 Spencer or Lichtman rebuttal reports?

22 A. No.

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1 Q. I am going to mark this as Exhibit 1. It
2 is your expert report.

3 (Exhibit 1 was marked and
4 attached to the transcript.)

5 Q. Dr. Kidd, you've just been handed what has
6 been marked as Exhibit 1. Have you seen this
7 document before?

8 A. I have.

9 Q. What is it?

10 A. It is my expert report in response to the
11 Spencer and Lichtman reports.

12 Q. And I'll give you a second, if you just
13 want to look through and make sure it's a complete
14 copy.

15 A. It does look to be complete to me.

16 Q. All right. I'd like you to turn to page
17 44 of Exhibit 1 which is labeled Appendix B. This
18 is your CV, correct?

19 A. It is.

20 Q. Is this your most recent CV?

21 A. This is probably -- I mean, it is. I
22 probably updated it sometime in late July or

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1 August.

2 Q. All right. Any updates that you can think
3 of that need to be added to this?

4 A. I will tell you exactly. So on page 47,
5 Refereed Journal Articles and Book Chapters,
6 Double-blind reviewed articles on Politics (11),
7 the 2019 pending has a publication date and a
8 volume number and a page number, so -- so this
9 must be my -- July -- so sometime in mid-August
10 that got -- sometime in late August, actually,
11 that got published.

12 Q. So that was published in August 2019?

13 A. Right. So there is a volume and a page
14 number, and the pending would be taken off, so...

15 Q. Anything else?

16 A. No.

17 Q. Any corrections that need to be made to
18 this CV?

19 A. None that I know of.

20 Q. All right. Do you currently teach any
21 classes at Christopher Newport University?

22 A. I do. I teach a summer class. During the

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1 academic year my administrative duties are too
2 heavy to teach class.

3 Q. Is the summer class that you teach an
4 undergraduate or a graduate course?

5 A. Undergraduate.

6 Q. What is it?

7 A. It is an Honors program course called The
8 Good Society.

9 Q. What is that class about?

10 A. It looks at -- it's an interdisciplinary
11 course. We have students from all majors in the
12 Honors program. And it looks at the role of
13 various Liberal Arts disciplines and their
14 influence on making society better. So, you know,
15 what about Music improves our quality of life?
16 What about Philosophy? What about Chemistry? So
17 that's really what the course is about.

18 Q. When was the last time you taught classes
19 during the fall or winter semesters?

20 A. Probably five years ago I became a Vice
21 Provost. So just to look at my CV. So the fall
22 of 2014 would be the last time I taught regularly

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1 during a semester because in the fall of 2014 I
2 became Vice Provost of the University. And that's
3 a point where the administrative duties become
4 too -- too heavy.

5 Q. So the last time you were teaching in the
6 fall semester, what classes were you teaching?

7 A. Fall of 2014 would have been probably a
8 Political Campaigns and Elections class and a --
9 or a Political Behavior class, and Research
10 Methods class, both undergraduate. All three
11 undergraduate.

12 Q. Have you ever taught graduate courses?

13 A. I taught, about 20 years ago -- maybe, 18,
14 20 years ago I taught a graduate level Research
15 Methods class for a Public Administration program.
16 Taught one, and then -- and, then, that was it.

17 Q. Generally, what was the Political
18 Campaigns and Elections course about?

19 A. Just the basic structure of the way we run
20 elections and campaigns in the United States,
21 history of the development of campaigns and
22 elections in the United States, how candidates

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1 organize campaigns, nuts and bolts type stuff,
2 fundraising, all that kind of stuff, the role of
3 consulting firms in politics these days, that kind
4 of stuff.

5 Q. And, generally, what was the Political
6 Behavior class about?

7 A. Political Behavior class was really a
8 class that looked at the evolution of the
9 discipline of Political Science, you know, sort of
10 marking the middle of the -- marking the '60s,
11 '70s as a time when our primary method of analysis
12 shifted from case study and descriptive to more
13 analytic and predictive efforts to understand
14 individualized behavior and its influence on the
15 political process, that sort of thing.

16 Q. And what was the Research Methods class
17 about, briefly?

18 A. Just the first half of the semester is
19 sort of a theory class, you know, how we got to
20 where we are with our methods. The second half of
21 the semester is actually a practice class,
22 teaching students how to conduct bivariate,

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1 multivariate regression analysis, and teaching
2 them some software programs like SPSS or Stata.

3 Q. Have you ever taught any classes that
4 discuss the Voting Rights Act?

5 A. So -- yeah. I haven't done this in a
6 while, but 10, 15 years ago I taught Judicial
7 Process a few times. And I've done Con Law a
8 couple times in the past. As our department grew,
9 we ended up hiring people with the expertise in
10 those areas, so -- so I stopped teaching them. So
11 I would call that surface level, not anything as
12 deep as, say, a Campaigns and Elections class or a
13 Political Behavior class.

14 Q. Do you have a J.D.?

15 A. I do not.

16 Q. What did you discuss about the Voting
17 Rights Act in the Judicial Process class? Do you
18 remember?

19 A. We're going back a dozen years. I
20 couldn't tell you exactly.

21 Q. Same answer for the Con Law class?

22 A. Yeah. I mean, it's -- yeah. We're going

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1 back 12 or 15 years on those.

2 Q. Have you ever taught any classes that
3 discussed racially polarized voting specifically?

4 A. No.

5 Q. Have you ever taught any classes that
6 discussed redistricting?

7 A. Not redistricting as a class but
8 redistricting in the context of Intro to American
9 Politics. And the Political Campaigns and
10 Elections class would have talked about
11 redistricting, especially around redistricting
12 time.

13 Q. What would you have discussed about
14 redistricting in the Political Campaigns and
15 Elections class?

16 A. So probably we would have been focusing on
17 the arguments about redistricting, for one. And,
18 then, secondly, I would have probably spent some
19 time on how redistricting has become much more
20 lethal as a political tool in the age of big data
21 analysis and computers. So it would have been
22 that -- those two general, kind of, conversations.

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1 And, then, we probably would have
2 discussed the redistricting debates in Virginia
3 because those would have been around the time of
4 redistricting. And I do Virginia politics, so I
5 probably would have talked about that.

6 Q. And you referenced one of the things that
7 you talked about is arguments regarding
8 redistricting?

9 A. Yeah. The political debate. The
10 political debate about -- around redistricting and
11 whether it should be -- fundamentally, the debate
12 is about should this be -- should redistricting be
13 done by, you know, legislators with a -- as a
14 political tool as opposed to taken out of the
15 legislative process, taken out of the hands of
16 elected officials, and done by independent
17 commissions or things like that. I would have
18 talked through all of that.

19 Q. Do you have a view on that?

20 A. No. I mean, I -- my general approach to
21 teaching is to try to keep my views out of that.
22 And so I would have given -- I would have

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1 facilitated the conversation, obviously. I would
2 have challenged somebody on both sides just to
3 generate the conversations.

4 Q. Do you personally, not as a teacher but do
5 you personally, have a view on that?

6 A. Sure I do. Personally, I think
7 redistricting -- so my personal view is that
8 within -- within a certain -- redistricting was
9 much less lethal in the past than it is today
10 because of the availability of computers and big
11 data. And so where -- where redistricting is used
12 as an effort to, you know, to sort of nullify or,
13 you know, kill the prospects of one party or the
14 other, then I think -- I think it can go too far.
15 But basically -- my personal view is I think
16 redistricting can go too far as a political tool.

17 Q. Have you written any peer-reviewed
18 articles on the Voting Rights Act?

19 A. No.

20 Q. Have you published any articles at all
21 that discuss the Voting Rights Act?

22 A. Well, I've got a book on Southern politics

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1 that probably talks about the Voting Rights Act in
2 it because we talk through the transition -- we go
3 through the transition of the South over -- you
4 know, from the '50s to present. So I'm sure that
5 we talked about the Voting Rights Act there.

6 Q. What is the name of that book?

7 A. The Rational Southerner. And it is on
8 page 47.

9 Q. What is the general thesis of that book?

10 A. The general thesis of the book is that it
11 has -- the transformation of the South is the
12 result of the mobilization of black voters across
13 the South and the shift in conservative white
14 voters toward the Republican party, that dynamic
15 has sort of created the modern -- the politics of
16 the modern South.

17 And in that context we would have talked
18 about the Voting Rights Act and the Civil Rights
19 Act as pivotal pieces of legislation that sort of
20 caused the mobilization of black voters that would
21 have been -- also led to the shift of white
22 conservatives.

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1 Q. Can you describe in a little more detail
2 why you think the Voting Rights Act was pivotal?

3 A. Well, because the Voting Rights Act and
4 the Civil Rights Act resulted in -- were
5 essentially the federal government saying we're
6 going to enforce the Civil -- the post-Civil War
7 amendments to the Constitution and we're going to
8 dismantle Jim Crow laws that existed all over the
9 South and other parts of the country.

10 So it was the federal government
11 essentially stepping in for the first time in
12 nearly 100 years and saying we're going to enforce
13 the rights of African Americans and others that
14 are disenfranchised, poor whites and others, to be
15 able to participate in politics, vote, et cetera.

16 Q. Have you published any peer-reviewed
17 articles on racially polarized voting?

18 A. Not that I -- not specifically on racially
19 polarized voting. I'm just thinking there may --
20 no. I would say no. I'm just thinking through
21 stuff that got published, you know, 10, 15 years
22 ago.

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1 Q. Have you published any peer-reviewed
2 articles on the methodology for conducting
3 racially polarized voting?

4 A. The methodology of conducting racially
5 polarized voting?

6 Q. Yes.

7 A. No.

8 Like articles that say this is how we
9 would racially polarize -- this is how we would
10 vote in a racially polarized manner?

11 Q. This is how we would conduct a racially
12 polarized voting analysis?

13 A. No.

14 Q. Have you ever reviewed a state or local
15 government method of election to evaluate whether
16 the method provides an equal opportunity for
17 minority voters to elect their preferred candidate
18 of choice?

19 A. Have I reviewed a -- say again. Do you
20 mean reviewed an academic article that was sent to
21 be peer-reviewed?

22 Q. No.

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1 A. Okay.

2 Q. Have you ever evaluated a state or local
3 government's method of election, so election
4 system, for whatever method provides an equal
5 opportunity for minority voters to elect their
6 preferred candidate of choice?

7 A. Not -- not that I can think of.

8 Q. Before your work on this case, had you
9 ever done an analysis of racially polarized voting
10 in a local jurisdiction?

11 A. No.

12 Q. Had you ever done an analysis of racially
13 polarized voting in any jurisdiction?

14 A. No.

15 Q. Before your work on this case, had you
16 ever done an analysis of white bloc voting in any
17 jurisdiction?

18 A. No.

19 Q. All right. Let's turn to page 53 of your
20 report. On this page, under the activities and
21 services do you see that in 2011 you were an
22 advisor to the Independent Bipartisan Advisory

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1 Commission on Redistricting, correct?

2 A. Correct.

3 Q. What was the Independent Bipartisan
4 Advisory Commission on Redistricting?

5 A. So the Governor, Governor McDonnell,
6 created this commission. I want to say it was,
7 like, in January of 2011. But because it -- I'll
8 tell you, all we did was we hosted the Commission.
9 So that's what advisory means. We hosted the
10 Commission in the sense that we -- the Wason
11 Center for Public Policy, that had sponsored that
12 redistricting competition, hosted the Commission
13 in the sense that we supported them.

14 Because -- I'm trying to remember. The
15 Governor didn't have a budget to pay for it or
16 there hadn't been legislatively approved money.
17 And because our redistricting competition put
18 pressure on the General -- on the Governor and the
19 General Assembly to be more open about the
20 redistricting process, the Governor came in, like,
21 January of that year and said, I had made a
22 promise to do an independent commission when I was

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1 running, so I'll do it, but I need you to -- I
2 need support in hosting it.

3 And so the Governor appointed Bob
4 Hallworth from VCU, formerly VCU at that time, to
5 chair the Commission. And the Wason Center agreed
6 to, sort of, support it administratively. And we
7 apparently could do that because we were a state
8 agency.

9 So I didn't -- I didn't do anything in
10 terms of testifying or anything like that. I,
11 literally, hosted meetings and arranged meetings
12 for them.

13 Q. Who appointed you as an advisor to that
14 commission?

15 A. The Governor did.

16 Q. As an advisor to the Commission, did you
17 evaluate any maps for compliance with Section 2 of
18 the Voting Rights Act?

19 A. No.

20 Q. Did you perform any racially polarized
21 voting analyses?

22 A. No.

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1 Q. Did you perform any analyses of white bloc
2 voting?

3 A. No.

4 Q. Did you consider or analyze racial data
5 regarding proposed maps in any way?

6 A. No.

7 Q. Besides serving as an advisor to the
8 Bipartisan Advisory Commission in 2011, have you
9 ever assisted a state legislature in drawing state
10 legislative districts in the United States?

11 A. No.

12 Q. Have you ever been retained to draw a
13 district plan for any local government?

14 A. No.

15 Q. Were you involved in any way in the
16 redistricting of the Virginia Beach City Council
17 in 2011?

18 A. No.

19 Q. Have you ever drawn a congressional map
20 for any U.S. state?

21 A. No.

22 Q. Have you ever been appointed by a court to

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1 draw a redistricting plan?

2 A. No.

3 Q. And have you ever drawn a district that
4 has been adopted by a court as a remedy to a
5 redistricting claim?

6 A. No.

7 Q. All right. Let's go back to the cover
8 page of your report. And on the cover page here
9 you state that supporting data and analysis was
10 provided by Kimball Brace. What supporting data
11 did Kimball Brace provide?

12 A. Kimball Brace provided -- I don't know
13 that it was analysis that has ended up in the
14 report, but it was analysis that he did that we
15 discussed.

16 Q. So you don't know if it's in this final
17 report or not?

18 A. It is not in the final report. I was
19 being overly transparent there.

20 Q. What about data that he gave you?

21 A. Well, supporting data and analysis meaning
22 he -- the CVAP data was the data that he provided

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1 some analysis on essentially as a result of
2 questions that were -- that were -- as we were
3 talking through this as a -- as a team. So
4 that's -- it's really that data, CVAP data.

5 Q. When you say as we were talking about this
6 as a team, you mean you and Kimball Brace or do
7 you mean you and the attorneys and Kimball Brace?

8 A. All the attorneys. Everybody.

9 Q. Okay. So as far as you know, there is
10 nothing -- there is no data that was provided to
11 you by Kimball Brace that's actually contained in
12 this report?

13 A. (Moved head from side to side.)

14 Q. And there is no analysis that was done by
15 Kimball Brace that's actually on this report?

16 A. (Moved head from side to side.)

17 MR. BOYNTON: You need to respond
18 verbally.

19 A. Oh. Actually, I'm thinking. As I'm
20 thinking -- no. There is none. I mean, this --
21 this is all my work and my -- there is nothing
22 that Kimball did in here.

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1 Q. Did you use the data that Kimball Brace
2 provided to you in any way in preparing your
3 report?

4 MR. HARRIS: Object to the form of the
5 question.

6 You can answer.

7 A. So the data that Kimball Brace -- what
8 Kimball Brace provided was answers to questions
9 and clarifications that ended up in this report.
10 There were questions that I asked or were being
11 discussed as the group. And so he might have
12 tried to answer those questions by going and doing
13 some analysis and coming back with it. But that's
14 how -- so it ended up -- that, and then it ends
15 up, you know, running through me into this report,
16 if that makes sense.

17 Q. Can you point to anything specifically in
18 the report that you -- that was provided by
19 Kimball Brace, even if it's just answers to
20 questions?

21 A. No. I actually cannot because I don't
22 think anything in -- there isn't a direct line

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1 between something he -- analysis he did that ended
2 up in this report. It was really more him chiming
3 in on questions. And most of those questions were
4 really, as I'm thinking back through this,
5 attempting to understand Spencer's analysis, so...

6 Q. Did you ever email Kimball Brace without
7 either of your attorneys on it?

8 A. No.

9 Q. Did you ever talk to him on the phone?

10 A. No. I never talked to him on the phone
11 where the attorneys weren't also on the phone
12 call.

13 Q. Did you write this expert report?

14 A. Yes.

15 Q. Did you write every word of it?

16 A. Yes.

17 Q. Did anyone else write any portion of this
18 report?

19 A. No. This is -- this is all my writing.

20 Q. Besides Kimball Brace or the -- your
21 attorneys, did you confer with anyone else or get
22 any assistance in creating your expert report?

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1 A. No.

2 Q. Did any students help you in preparing
3 this report?

4 A. None.

5 Q. Did anyone review your calculations?

6 A. Well --

7 MR. HARRIS: Excluding counsel.

8 A. Not excluding counsel and other expert
9 witnesses.

10 Q. Did any of your colleagues at Christopher
11 Newport University assist you or review it before
12 you submitted it?

13 A. No.

14 Q. Dr. Kidd, are you familiar with the
15 Gingles' prong of three conditions?

16 A. I am.

17 Q. The first Gingles prong requires that
18 racial or language minority group is sufficiently
19 numeric and compact to form a majority in a
20 single-member district, correct?

21 A. That is correct.

22 Q. You'd agree that you are not offering an

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1 opinion in this case on the first Gingles prong,
2 right?

3 A. I do not see that as my role in this case.

4 Q. So you're not offering an opinion on the
5 first --

6 A. Correct.

7 Q. If we could look at page 3 of Exhibit 1.

8 A. All right.

9 Q. In the fourth paragraph from the top, you
10 state that you rely almost completely on Spencer's
11 own data and analysis in your report. What did
12 you mean by that?

13 A. Meaning that we were -- that I was taking
14 Spencer's analysis and using only his analysis to
15 write the response. In other words, I'm not doing
16 any independent analysis on my own with data that
17 I've collected or data that I've gotten from
18 somewhere else.

19 Q. So in this report you use the racially
20 polarized voting estimates provided by
21 Dr. Spencer, correct?

22 A. Correct.

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1 Q. And except where noted in your report, you
2 do not dispute Dr. Spencer's estimates, right?

3 A. I would say I generally dispute a lot of
4 them. They're noted in here, yeah.

5 Q. So the question was, except where noted in
6 your report you do not dispute Dr. Spencer's
7 estimates, correct?

8 MR. HARRIS: Object to the form of the
9 question.

10 You can answer.

11 A. No. I would say there probably are
12 disputes that I -- I would say there probably are
13 estimates that I would dispute that didn't end up
14 in here, but I'd have to go back and look through
15 all my notes to actually, you know, say what they
16 were.

17 I think I generally dispute his framing.
18 And that's what I'm -- what's -- why I'm
19 hesitating because I would generally dispute the
20 way he structured it.

21 Q. But those other disputes you may have are
22 not included in this expert report, correct?

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1 A. Right.

2 Q. And you can't remember what any of those
3 are --

4 A. Well, I --

5 Q. -- sitting here today?

6 MR. HARRIS: Object to the form of the
7 question.

8 A. I would just say I generally dispute his
9 framing. And so I would -- you know, what flows
10 from that is a dispute of all the individual
11 numbers, you know. You have to --

12 Q. What do you mean when you say you
13 generally dispute his framing?

14 A. The way he structured his report, I would
15 generally dispute in the sense that he is -- he's
16 creating standards for prong 2 and prong 3 that I
17 think are too loose.

18 Q. What do you mean by that?

19 A. The standards that he's -- so if you
20 look -- I don't have his -- part of the reason I'm
21 struggling here is I don't have his report in
22 front of me. But if you look at his -- he's

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1 actually -- he's actually -- in his report and his
2 rebuttal report he sort of demonstrated this.

3 In his report there are places where he
4 would say, you know, this analysis, you know,
5 strongly shows that minorities supported this
6 candidate. And, then, in his rebuttal or in his
7 rebuttal of my report he's changed that, where
8 he's not demonstrating -- where he's not showing a
9 candidate being supported strongly by minorities.

10 I'm -- this is totally from memory. But I
11 think Cabiness is one of them. In his original
12 report Cabiness is strongly -- and he uses the
13 word strongly. And in his rebuttal Cabiness is
14 pulled back from that. I think he's conceded that
15 Cabiness is not strongly supported by minorities.
16 But I think he puts a question mark by it, so
17 conceding that.

18 So his general structure of his initial
19 report, as spelled out here in this report, was
20 loosely -- loosely constructed. And when it was
21 challenged, he then comes back with a rebuttal
22 that is essentially a completely different report.

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1 Q. You did not perform your own homogeneous
2 precinct calculations, correct?

3 A. That's correct.

4 Q. And you did not perform your own
5 ecological regression calculations, correct?

6 A. Correct.

7 Q. And you did not perform your own
8 ecological inference calculations, correct?

9 A. Correct.

10 Q. Are you familiar with the statistical
11 programming language of R?

12 A. No. I mean, I'm familiar with it, but I
13 couldn't -- I couldn't sit here and pop out an R
14 model for you.

15 Q. What do you mean by you're familiar with
16 it?

17 A. Well, familiar with it in the sense that I
18 read a lot of academic work that is -- that uses
19 R, and so you just sort of generally become
20 familiar with the language that people use. But
21 I -- for most of my work I use a program called
22 Stata or SPSS.

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1 Q. So you could read -- I'm trying to
2 understand what you said. You could read R, but
3 you couldn't necessarily program --

4 A. I could understand the output from R. I
5 couldn't program in R.

6 Q. Okay. Are you aware Dr. Spencer disclosed
7 his R code with each of his expert reports?

8 A. I am.

9 Q. Did you run Dr. Spencer's R code?

10 A. I did not.

11 Q. Did you ever open Dr. Spencer's R code
12 file?

13 A. I did not. I don't have -- no. I don't
14 have the ability to work R, so...

15 Q. So you never opened or reviewed the R code
16 file to check the calculations, correct?

17 A. Nope. That wasn't my job. I took his
18 work for -- for face value.

19 Q. In Sections II and III of your report your
20 opinions are based on your personal understanding
21 of what Gingles prongs 2 and 3 require, correct?

22 MR. HARRIS: Objection to the form of the

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1 question.

2 You can answer.

3 A. I'm -- yes. I mean, isn't -- aren't
4 all -- isn't everything we all do based upon our
5 personal understandings of --

6 Q. You aren't rendering any legal opinions?

7 A. Oh. Got it. Yes. Yes. I'm not
8 rendering legal opinion. That's right.

9 Q. Let's look at page 3 still. Here you in
10 the -- I think it's in the fifth paragraph down.
11 The fourth paragraph down, the big one --

12 A. One. Two. Three. Four. The one that
13 says never in bold.

14 Q. Exactly.

15 You state that, Conducting an
16 examination -- I'm sorry. You write that, When
17 candidates that are the preferred candidates of
18 minority voters are considered, the number of
19 African American and minority-preferred candidates
20 who won their elections is seven of 17.

21 Do you see that?

22 A. Are you in the middle of the paragraph?

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1 Q. Yes.

2 A. I'm trying to find -- When white
3 candidates who Spencer identifies --

4 Q. I think it's the sentence before the one
5 with the never.

6 A. When white candidates who Spencer
7 identifies as the preferred candidates of minority
8 voters are considered, the number of African
9 American and minority-preferred candidates who won
10 their elections is seven of 17, including six of
11 seven since 2012.

12 Is that the sentence?

13 Q. That one.

14 A. Okay.

15 Q. As a percentage, seven of 17 is 41
16 percent, correct?

17 A. I'm going to take your word for it.
18 Otherwise, I --

19 Q. Do you want a calculator?

20 A. No. I'll take your word for it.

21 Q. Further down in this same paragraph, I'm
22 looking at the sentence that starts finally.

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1 A. Uh-huh.

2 Q. You state that, Conducting an examination
3 of Asian and Hispanic voters independent of
4 African American voters is a prong 3 obligation.

5 Do you see that?

6 A. Further down in that paragraph. Finally
7 and very importantly, Spencer never conducts an
8 examination of Asian and Hispanic voters
9 independent of African American voters, which is a
10 prong 3 obligation.

11 Yes. I do see that.

12 Q. What is your basis for believing that
13 conducting an analysis of each group separately is
14 required under Gingles prong 3?

15 A. It's my -- my understanding of Gingles
16 prong 3 and my understanding in talking with the
17 legal team.

18 Q. So besides your conversations with the
19 legal team, what is that understanding based on?

20 A. Reading.

21 Q. Reading what?

22 A. Reading other -- reading other cases. I

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1 didn't keep a record of other cases, but
2 reading -- just reading about this, attempting to
3 understand, as well as I could, prongs 2 and 3.

4 Q. Do you remember any of those cases
5 specifically that you're talking about?

6 A. No. There are some -- you know, at this
7 moment in time I couldn't give you a citation. I
8 probably read a couple of dozen cases or articles,
9 law review articles about cases.

10 Q. Did you find those cases in your own
11 independent search or were those provided to you
12 by your attorneys?

13 A. My own.

14 MR. HARRIS: Object to the form of that
15 question.

16 MS. HARLESS: He just said his own.

17 MR. HEBERT: He just said his own.

18 Q. So as best as you can remember today, can
19 you give me the name of any specific case that
20 states that each minority group has to separately
21 be analyzed under Gingles prong 3?

22 MR. HARRIS: Object to the form of the

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1 question.

2 You can answer.

3 A. No, I cannot.

4 Q. And, again, you're not offering a legal
5 opinion in this case, correct?

6 A. I'm not offering a legal opinion.

7 Q. And you said that you found those cases on
8 your own, correct? How did you go about doing
9 that?

10 A. Database searches essentially.

11 Q. Which databases?

12 A. LexisNexis, ABI. I think one is called
13 ABI. I can't tell you all the databases.

14 Q. And what were the search terms that you
15 used?

16 A. Gingles, voting rights. I can't tell you
17 all the search terms precisely, but it would be
18 things like that.

19 Q. You would agree that elections for City
20 Council seats in Virginia Beach often include more
21 than two candidates for a seat, correct?

22 A. I don't know that I would say often.

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1 At-large City Council races do, but district races
2 don't. And I think there are far more district
3 races with two candidates than there are at-large
4 races with multiple candidates.

5 Q. I want to be clear what you're talking
6 about because all races are at-large. So are you
7 talking about the residency district races?

8 A. Correct.

9 Q. Would you agree that in each election year
10 multiple seats are often up for election?

11 A. Well, no, because there are years where
12 multiple seats aren't up for reelection.

13 Q. So more often than not would you agree
14 that multiple seats are often up for election?

15 A. So if I remember right, during the time of
16 analysis, from 2008 to present, in Spencer's
17 report there were three or four of -- what did he
18 do -- 10 years of races. There were three or four
19 in his analysis where there were multiple
20 candidates.

21 Q. I'm not talking about multiple candidates.
22 I'm talking about multiple City Council seats.

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1 A. Correct. Yeah. That's the same thing. I
2 mean, there are three or four where there are
3 multiple seats, essentially two seats, available.
4 So I don't even know if that's a majority. I
5 think it's actually less than a majority.

6 Q. Are there years where there is only one
7 City Council seat up for election?

8 A. I'm not looking at Spencer's report, but,
9 if you look at it, I do think there are election
10 years where there is only -- where they're
11 residential -- they're residential elections and
12 there is only one seat up, yeah.

13 Q. One out of 10?

14 A. One -- what do you mean, one out of 10?

15 Q. One seat out of the 10 possible seats on
16 the City Council is the only one up for election?

17 A. Oh. I don't know about that. I'm just
18 saying where the elections that -- the elections
19 that happen include just one seat, residential
20 seat, like a Kempsville seat.

21 Q. So I'm talking about in an election
22 year --

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1 A. Yeah.

2 Q. -- is there more than one seat up for
3 election, whether it's a residency district or an
4 at-large?

5 A. Got it.

6 MR. HARRIS: Object to the form of the
7 question.

8 You can answer.

9 A. Yes. I think most of the time, yes.

10 Q. Okay. So you'd agree that most of the
11 time there is more than one seat up for election
12 for City Council races?

13 A. Yeah. I can't -- I can't remember off the
14 top of my head whether there is only one seat up
15 for reelection in any of these -- in any of these
16 elections between 2008 and present.

17 Q. And you would agree that most elections
18 often include more than two candidates for a
19 single seat, correct?

20 A. Say that again.

21 Q. And you would agree that elections for
22 City Council seats often include more than two

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1 candidates for a single seat, correct?

2 MR. HARRIS: Object to the form of the
3 question.

4 A. I don't know that I would say often.

5 Q. Okay.

6 A. Sometimes. I would use the term sometimes
7 but not often.

8 Q. What do you mean by sometimes?

9 A. Well, I think, if I'm remembering right,
10 of the 10 or so elections that are included in
11 Spencer's analysis, only three or four of those
12 included multiple seats up; in other words,
13 multiple at-large seats.

14 Q. So I'm not talking about multiple seats.
15 I'm talking about how many candidates are running
16 for a seat.

17 A. And I think it's -- I think it's only
18 three or four.

19 Q. George Furman is a black candidate who ran
20 for Virginia Beach city office in 2010 -- 2014 and
21 2016, correct?

22 A. Yes.

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1 Q. And Mr. Furman has run for a City Council
2 seat several times in Virginia Beach, right?

3 A. That is true.

4 Q. And it would appear from election results
5 that Mr. Furman is not a viable candidate,
6 correct?

7 A. If viable --

8 MR. HARRIS: Object to the form of the
9 question.

10 You can answer.

11 A. If viable means didn't win, yes.

12 Q. Mr. Furman came in last place every time
13 he ran, right?

14 A. I don't know that that's true. If you say
15 it's true, but I'd have to actually go back and
16 look.

17 Q. So sitting here today, you don't know
18 whether George Furman came in last place every
19 single time he ran?

20 A. No. I'd need to look. I'd need to
21 actually look at that.

22 Q. Is it in your report?

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1 A. It is -- I don't think it's in my report.
2 I know Furman didn't win. I don't know if he came
3 in last place off the top of my head.

4 Q. You'd agree that analysis of Mr. Furman's
5 candidacy is not probative of racially polarized
6 voting, right?

7 MR. HARRIS: I object to the form of the
8 question.

9 A. I would not agree.

10 Q. Why not?

11 A. It's cherry-picking in my mind.

12 Q. Why is it cherry-picking in your mind?

13 A. So initially Spencer says minority
14 candidates. Right? And, then, as he works his
15 way through his report, he says minority
16 candidates who -- I'm not going to use -- I'm not
17 going to be able to repeat his verbiage exactly,
18 but he's essentially saying minority candidates
19 who are supported -- African American candidates
20 who are supported at some certain level are
21 probative.

22 And it seems to me like he's essentially

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1 cherry-picking. He's essentially saying minority
2 candidates who reach a certain level of support
3 based upon my, you know, preference of whatever
4 that support would be I'm going to consider
5 probative but, if not, I'm going to -- I'm going
6 to not consider them probative. So I wouldn't
7 agree with that statement.

8 Q. Ignoring a candidate's race, if that
9 candidate comes in last place every single time
10 they run, do you think their candidacy is useful?

11 MR. HARRIS: Objection to the form of the
12 question.

13 You can answer.

14 A. I don't know what you mean by useful.

15 Q. Do you think that candidacy is probative
16 in any kind of analysis of racially polarized
17 voting?

18 A. I don't think you could ignore a
19 candidate's race.

20 Q. Whether -- if a white candidate ran and
21 every single time that candidate came in last
22 place, would that election and candidacy be

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1 probative of racially polarized voting in Virginia
2 Beach?

3 MR. HARRIS: Object to the form of the
4 question.

5 You can answer.

6 A. I don't -- I don't know that I can answer
7 that. I mean, I don't --

8 Q. Why not?

9 A. I think -- the trouble I'm having with it
10 is essentially what that says is if minority
11 voters: black voters, Asian voters, Hispanic
12 voters, don't support a candidate at a certain
13 level, undefined, then we're not going to consider
14 it probative. And I just don't -- I don't -- I
15 guess I don't -- I need a -- some -- some standard
16 to say it's not probative.

17 Q. So in your mind every single election for
18 City Council and every single candidate is
19 probative of a racially polarized voting analysis?

20 MR. HARRIS: Object to the form of the
21 question.

22 You can answer.

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1 A. Yes. If minority candidates -- initially
2 in Spencer's analysis he includes minority
3 candidates. And even in some of his analysis
4 where -- after he says Furman isn't probative, he
5 includes Furman in some of his lists. So I think
6 that's where my confusion comes in is that
7 sometimes he says it's probative, sometimes he
8 says it isn't, sometimes he includes Furman,
9 sometimes he doesn't. And so I don't know what
10 the standard is is where I'm confused.

11 Q. My question is what do you consider to be
12 the standard?

13 A. My -- so the way I approach this is
14 attempting to look at what Spencer did and study
15 what Spencer did. And Spencer did both things.

16 Q. So you have no --

17 A. So I would say Furman is probative.

18 Q. So you have no independent opinion on what
19 makes a candidate probative or not besides what
20 Dr. Spencer did?

21 MR. HARRIS: Object to the form of the
22 question.

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1 You can answer.

2 A. As it relates to this analysis, that was
3 my opinion. My opinion was an effort to
4 understand what Spencer was doing. And Spencer
5 was in both places at the same time. And I think
6 Spencer was in both places at the same time
7 because he was trying to use Furman where it was
8 beneficial to him and trying to exclude Furman
9 where it wasn't.

10 Q. So setting Dr. Spencer's analysis aside,
11 what do you think makes a candidate probative for
12 a racially polarized voting analysis?

13 A. Well, at a basic level, if a -- if a
14 minority candidate is running, then they're
15 probative. And if you're going to -- if you're
16 going to argue they're not probative, you have to
17 have -- you have to make your argument and stick
18 with it. And Spencer didn't do that.

19 So I think you have to begin with a
20 minority candidate is probative. And, then, if
21 you're going to exclude them, you have to have a
22 rationale for excluding them and stick with your

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1 rationale. And he didn't do that.

2 Q. Are only minority candidates probative?

3 A. No.

4 Q. Can you think of any example of a specific
5 candidacy that you would exclude from an analysis
6 of racially polarized voting in Virginia Beach as
7 not probative?

8 MR. HARRIS: Object to the form of the
9 question.

10 You can answer.

11 A. Can I think of any specific candidate that
12 I would exclude? I suppose -- no. Not a specific
13 candidate.

14 Q. All right. Let's turn to page 6 of your
15 report. I'm looking at the second paragraph from
16 the top.

17 A. Table 1?

18 Q. Yes. But I'm looking at the last
19 sentence. So there you state that although you
20 consider elections during the time period of 2008
21 to 2018, the period of 2012 to 2018 is more
22 probative.

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1 A. Uh-huh.

2 Q. What is your basis for the belief that the
3 time period of 2012 to 2018 is more probative than
4 the entire time period of 2008 to 2018?

5 A. Well, because I think what's happening
6 currently is more probative than what happened in
7 the past, generally speaking.

8 Q. Any other reasons?

9 A. I mean, no. That's my general -- my
10 general view is that what happened in the past is
11 less probative than what's happening today.

12 Q. Why is 2012 the starting point for your
13 time period -- for the time period you view as
14 more probative and not 2010?

15 A. 2012 would be the first election after the
16 redistricting that happened post-2010 -- 2011
17 redistricting. Is that right? Yeah.

18 Q. All elections in Virginia Beach are
19 at-large, correct?

20 A. Yes.

21 Q. Why is 2012 the starting point for the
22 time period you view as more probative and not

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1 2014?

2 A. Well, because you're trying to capture
3 whatever census population changes that you know
4 about as a result of the census, all that stuff.
5 I mean, you can't say 2010 because actually the
6 redistricting and the census doesn't actually
7 happen in 2010. It's done in 2010, but you don't
8 get the results immediately.

9 Q. Do you have any understanding of whether
10 there was a majority minority district -- if any
11 of the seven residency districts were majority
12 minority following the redistricting?

13 A. I don't think any of them were.

14 Q. And do you know if any of the districts
15 were before the 2011 redistricting?

16 A. I don't think Virginia Beach has ever had
17 a majority minority district. I could be wrong
18 about that, but I don't think they ever have.

19 Q. Let's turn to page 7 of your report. I'm
20 looking at Table 1.

21 A. Uh-huh.

22 Q. Of the candidates you've identified in

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1 Table 1 that received 50 percent or more support
2 from black voters, six of eight lost, correct?

3 MR. HARRIS: Object to the form of the
4 question.

5 You can answer.

6 A. Ask you question again. I'm just trying
7 to get my bearings on the table.

8 Q. Of the candidates you've identified in
9 Table 1 that received 50 percent or more support
10 from black voters, six of eight lost, correct?

11 MR. HARRIS: Object to the form of the
12 question.

13 You can answer.

14 A. Yes.

15 Q. Isn't it true that all eight candidates
16 would have won with black votes alone?

17 MR. HARRIS: Objection to the form of the
18 question.

19 You can answer.

20 A. I don't know that that's true.

21 Q. What information would you need to know
22 whether that's true?

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1 A. I would need to know what proportion of
2 the population in any of those elections -- what
3 proportion of the voters in any of those elections
4 were African American. And I would need to know
5 something that's really impossible to know, and
6 that is how many of those African American voters
7 voted -- we have a certain number of City Council
8 elections where you can cast two votes.

9 Q. Uh-huh.

10 A. And a not insignificant number of voters
11 cast one vote. It's impossible to know which of
12 those voters cast one vote versus two votes. And
13 so I would need to know which of those African
14 American voters cast votes in both -- cast two
15 votes when they're able to cast two votes.

16 Q. Have you done any analysis of voting -- of
17 whether voters cast one or two votes in Virginia
18 Beach?

19 A. No, but what makes me understand that is I
20 looked at the total votes -- so Spencer has a --
21 has a mistake in his -- in a couple of his tables
22 in his first report. And the mistake is

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1 essentially in a couple of those at-large races
2 where you could cast two votes, his numbers are
3 off. Right? I pointed it out in my report.

4 Well, in the context of looking at that
5 to, like, say did he make a mistake, it became
6 obvious -- when I looked at total votes that
7 people cast in Virginia Beach, it was clear that a
8 not insignificant number of voters were not voting
9 twice. And it was just in my -- in my attempting
10 to understand whether he actually made a mistake
11 or not that I -- that I noticed that.

12 Q. And you don't know the race of those
13 voters, correct?

14 A. No. Virginia has -- Virginia doesn't
15 register voters by race.

16 Q. Candidate Sabrina Wooten won her race in
17 2018, correct?

18 A. She did.

19 Q. And candidate Ross-Hammond won in 2012 but
20 lost her reelection bid in 2016, correct?

21 A. That is correct.

22 Q. Isn't it true that white bloc voted

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1 against a losing candidate Ross-Hammond in 2016?

2 MR. HARRIS: Objection to the form of the
3 question.

4 You can answer.

5 A. That's incorrect.

6 Q. Let's turn to page 10, Table 4. So the
7 title of Table 4 is African American Candidates
8 for Virginia Beach City Council From 2008 to 2018
9 Who Received Cohesive African American Support
10 According to Spencer Sorted by Whether They Won or
11 Lost Due to White Bloc Voting.

12 A. Right.

13 Q. And one of the candidates listed as
14 satisfying prong 3 is Ross-Hammond in 2016,
15 correct?

16 A. According to Spencer.

17 Q. And you disagree with that?

18 A. I disagree with that. In fact, what I'm
19 doing in here is I'm sort of walking -- I'm
20 telling the story walking through this ultimately
21 to get at -- when you get to the end, there is
22 essentially one election where white bloc voting

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1 causing a minority candidate to lose.

2 Q. And what was that election, in your
3 opinion?

4 A. Well, if you go to the very end -- if you
5 go to the very end on 23, Bullock in 2010.

6 Q. So you'd agree that white bloc voted
7 against the losing candidate Bullock in 2010?

8 A. I would agree with that.

9 Q. And that's the only candidate that you
10 believe experienced white bloc voting?

11 A. That is correct.

12 Q. Let's go back to Table 1. Overall, 16 of
13 19 black candidates in Table 1 lost, correct?

14 A. That is correct.

15 Q. And of the three black candidates in Table
16 1 who won, two of them won in 2018, right?

17 A. That's correct.

18 Q. And of the 10 candidates in Table 1 you've
19 listed as not receiving 50 percent or more of
20 black support, three of those were George Furman,
21 correct?

22 MR. HARRIS: Object to the form of the

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1 question.

2 You can answer.

3 A. So -- yes. Table 1 is according to
4 Spencer. Yes.

5 Q. Let's turn to page 8 of your report. I'm
6 looking at Table 2. Of the candidates you've
7 identified in Table 2 with black support of 50
8 percent or more, six of nine lost, correct?

9 MR. HARRIS: Objection to the form of the
10 question.

11 You can answer.

12 A. According to Spencer, yes. That Table 2
13 is according to Spencer.

14 Q. But this table only includes candidates
15 who received 50 percent or more black support,
16 correct?

17 A. Sorted by whether they received cohesive
18 African American support according to Spencer,
19 yes.

20 Q. Table 2 is your reconstruction of the
21 data, correct?

22 A. Correct.

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1 Q. And what is your definition of cohesive
2 support?

3 MR. HARRIS: Object to the form of the
4 question.

5 You can answer.

6 A. I am not attempting to provide my
7 definition. I'm attempting to analyze Spencer's
8 definition.

9 Q. You have no definition, sitting here
10 today, of what cohesive support means in a
11 racially polarized voting analysis?

12 A. It means 50 percent plus one to me.

13 Q. 14 of 17 black candidates listed in Table
14 2 lost, correct?

15 A. That is correct.

16 Q. And two of the three black candidates
17 identified as winning in Table 2 won in 2018,
18 right?

19 A. That is correct.

20 Q. And of the eight candidates in Table 2
21 listed as not receiving 50 percent or more black
22 support, three were George Furman, correct?

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1 A. That is correct.

2 Q. Let's turn to page 9. In the top
3 paragraph of this page you write that a majority
4 of contests between the time period of 2008 to
5 2018 satisfied prong 2 in terms of black cohesion,
6 correct?

7 A. I'm getting -- yes. Majority African
8 American support since 2012, five candidates
9 satisfied prong 2 and four failed to satisfy prong
10 2. Correct.

11 The context is important, though.
12 Remember what I'm doing is walking through a
13 deconstruction of Spencer's analysis. So this is
14 what -- a third step in that deconstructive
15 process.

16 MR. BOYNTON: We don't have to do it right
17 now, but we're at about an hour-and-a-half. Maybe
18 a break at some point would be useful.

19 MS. HARLESS: Would you like to take a
20 break now?

21 MR. BOYNTON: If it's a good point for
22 you.

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1 MS. HARLESS: Fine with me.

2 (A recess was taken.)

3 Q. So we were looking at Table 3.

4 A. Uh-huh.

5 Q. Isn't it true that five of eight black
6 candidates in Table 3 with minority support of 50
7 percent or more lost?

8 MR. HARRIS: Objection to form of the
9 question.

10 You can answer.

11 A. This is -- again, this is according to
12 Spencer. Five of eight black candidates with --
13 one. Two. Three. Four. Five. That is true.

14 Q. And even though this is according to
15 Spencer, you created this table, correct?

16 A. Yeah. I just re -- I just redesigned
17 Spencer's data here.

18 Q. And you didn't --

19 A. None of this is independently my data.

20 Q. And you didn't independently calculate
21 different estimates, correct?

22 A. No. I just -- this is all Spencer's

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1 results.

2 Q. And you'd agree that two of the three
3 winning black candidates in Table 3 won in 2018,
4 correct?

5 A. I would agree.

6 Q. And Ms. Hammond did not win the reelection
7 in 2016 despite having 59.9 percent of minority
8 support, right?

9 MR. HARRIS: Object to the form of the
10 question.

11 You can answer.

12 A. According to Spencer, yes.

13 Q. Do you believe that Amelia Ross-Hammond in
14 2016 was the minority candidate of choice?

15 A. Ultimately, no.

16 Q. Why not?

17 A. If you go to the last table in here, on
18 page 23, in 2016 she did not have Asian support.
19 There was no Asian or Hispanic cohesion.

20 Q. And this is according to your analysis?

21 A. This is me reconfiguring Spencer's data
22 and then attempting to unpack -- as we explain in

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1 here, attempting to unpack his all minority
2 category of data. I mean, we walked through it,
3 you know. It's walked through pretty clearly in
4 here.

5 Q. Yeah. We'll get to that.

6 Of the eight candidates in Table 3 listed
7 as not receiving 50 percent or more minority
8 support, three were George Furman, correct?

9 A. That is true. According to Spencer's
10 data, yes.

11 Q. Let's go to page 10. And I'm looking at
12 Table 4.

13 A. Okay.

14 Q. You would agree that between 2008 and 2018
15 six out of the nine candidates listed here as
16 preferred by black voters lost their elections,
17 correct?

18 MR. HARRIS: Objection to the form of the
19 question.

20 You can answer.

21 A. This is, again, according to Spencer.
22 This is Spencer's data. The table is African

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1 American Candidates for Virginia Beach City
2 Council from 2008 to 2018 Who Received Cohesive
3 African American Support According to Spencer
4 Sorted by Whether They Won or Lost Due to White
5 Bloc Voting.

6 Q. That's not what I asked.

7 So I'm asking you, you would agree that
8 between 2008 and 2018 six out of the nine
9 candidates listed here as preferred by black
10 voters lost their elections, correct?

11 MR. HARRIS: Objection to the form of the
12 question.

13 You can answer.

14 A. I would agree that that's what Spencer
15 alleges.

16 Q. You created this table, correct?

17 A. This is a reconfiguration of Spencer's
18 data. I created -- I mean, yes, I physically
19 created the table, but it's all Spencer's data; I
20 just reorganized it in a different way.

21 Q. Two of the three black candidates
22 identified as winning in this table won in 2018,

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1 correct?

2 A. That is correct.

3 Q. Let's go to page 11. I'm looking at Table
4 5. You would agree that between 2008 and 2018
5 five of the candidates identified as preferred by
6 all minority voters lost their elections, right?

7 MR. HARRIS: Objection to the form of the
8 question.

9 You can answer.

10 A. Five of the candidates identified by
11 Spencer, yes. I would agree that that's what
12 Spencer is alleging.

13 Q. Did Dr. Spencer create any tables that
14 divided elections by --

15 A. No. This is my reconfiguration of
16 Spencer's data.

17 Q. So just to be clear -- I don't know if I
18 got an answer or not to that, so I'm just going to
19 ask again.

20 A. Okay.

21 Q. Between 2008 and 2018, according to Table
22 5, five of the eight candidates identified as

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1 preferred by all minority voters lost their
2 elections, correct?

3 MR. HARRIS: Objection to the form of the
4 question. That's not what the table says. You
5 said all minority voters. And it says African
6 American at the top of Table 5.

7 MS. HARLESS: No.

8 A. It is minority. Cohesive minority support
9 according to Spencer.

10 MR. HEBERT: Correct.

11 MR. HARRIS: I withdraw that objection.
12 But I do have an objection to the form of the
13 question.

14 You can answer it.

15 A. Duke it out.

16 I would agree that, according to Spencer,
17 that is -- I would agree with that. That is what
18 Spencer's data has shown.

19 Q. So according to Table 5, minority
20 preferred candidates usually lose, correct?

21 MR. HARRIS: Objection to the form of the
22 question.

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1 You can answer.

2 A. I would not agree with that. I would
3 disagree with that.

4 Q. Why would you disagree with that?

5 A. Well, if you go to the last table on page
6 24, again I'm walking -- I'm walking -- this
7 entire report for the Spencer portion of it is
8 literally -- is just walking a deconstructive path
9 through Spencer's report. And at the end of it
10 there is one candidate who loses because of white
11 bloc voting who has cohesive Asian plus Hispanic
12 plus African American support. So I wouldn't
13 agree with that statement that you just made.

14 Q. All right. Let's go to page 12.
15 According to your analysis in Table 6, the
16 election involving George Allen in 2010 satisfies
17 both Gingles prongs 2 and 3, correct?

18 MR. HARRIS: Objection to the form of the
19 question.

20 You can answer.

21 A. This is according to -- as reported by
22 Spencer, yes. This isn't -- this is me again

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1 reconfiguring Spencer's analysis, again walking
2 through this path of deconstructing Spencer's
3 report. According to Spencer, yes.

4 Q. In deconstructing the results of Spencer's
5 report, did you utilize the services of any other
6 expert in this case?

7 A. None that wasn't a part of this team,
8 whatever you want to call it.

9 Q. Did you create this chart?

10 A. Yes.

11 Q. Did you personally deconstruct the data
12 that was put into this chart?

13 A. Yeah. I mean, this is essentially
14 reconfiguring Spencer's report. This is, you
15 know -- all of that essentially comes from
16 Spencer's report. So it's not like I created an
17 Excel spreadsheet and did analysis. I mean, this
18 is just Spencer's report.

19 Q. So according to Spencer's analysis, the
20 election involving Tanya Bullock in 2010 satisfies
21 both Gingles prongs 2 and 3, correct?

22 A. According to Spencer's analysis, yes.

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1 Q. And you would agree with that, correct?

2 A. I wouldn't agree with that, no.

3 Q. Tanya Bullock in 2010?

4 A. Oh. I'm sorry. If you go to the very
5 last table, I think Tanya -- I think Bullock is
6 the last -- is the only one -- let me just make
7 sure that I'm right before I say yes or no. Page
8 23. Yes. Bullock is the only one.

9 Q. And according to Table 6, the election
10 involving Andrew Jackson in 2010 satisfies both
11 Gingles prongs 2 and 3, correct?

12 A. I would not agree with that. That's what
13 Spencer is alleging. I would not agree with that.

14 Q. So according to Table 6 is all I'm asking.

15 MR. HARRIS: Object to the form of that
16 question.

17 You can answer.

18 A. I mean -- yes. And Table 6 is a
19 reconfiguration of Spencer's analysis.

20 Q. According to Table 6, the election
21 involving Prescott Sherrod in 2011 satisfies both
22 Gingles prongs 2 and 3, correct?

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1 MR. HARRIS: Objection to the form of the
2 question.

3 You can answer.

4 A. That's what Spencer alleges, and that is
5 what is in Table 6. It's a reconfiguration of
6 Spencer's analysis.

7 Q. And according to Table 6, the election
8 involving Amelia Ross-Hammond in 2016 satisfies
9 both Gingles prongs 2 and 3, correct?

10 MR. HARRIS: Object to the form of the
11 question.

12 You can answer.

13 A. According to Spencer's analysis, and this
14 is a reconfiguration of his analysis, that's what
15 it says.

16 Q. In Table 6, five of the candidates listed
17 as having 50 percent or more minority support
18 lost, correct?

19 A. According to Spencer's analysis, that is
20 what he is alleging here.

21 Q. And you would agree that 14 of the 17
22 candidates listed in Table 6 lost, correct?

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1 A. That is what Spencer is alleging. I'm
2 simply reconfiguring what Spencer is alleging
3 here. I wouldn't agree to it.

4 Q. Let's turn to page 15 of your report. I'm
5 looking at Table 7.

6 A. Okay.

7 Q. Of the seven winners listed in Table 7,
8 Sessoms, Davenport, Henley, and Jones were
9 candidates of choice of white voters, correct?

10 MR. HARRIS: Object to the form of the
11 question.

12 You can answer.

13 A. You'll just have to give me a minute to --
14 all right. Ask that question again.

15 Q. Of the seven winners listed in Table 7 --

16 A. Okay.

17 Q. -- Sessoms, Davenport, Henley, and Jones
18 were candidates of choice of white voters,
19 correct?

20 MR. HARRIS: Object to the form of the
21 question.

22 You can answer.

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1 A. I don't -- I don't know that Table 7 says
2 that. I don't know that that's in Table 7.

3 Q. So sitting here today, you don't know
4 whether Sessoms, Davenport, Henley, and Jones were
5 candidates of choice of white voters?

6 MR. HARRIS: Objection to the form of the
7 question.

8 You can answer.

9 A. Well, you just asked me what Table 7 says.
10 Sitting here at this moment, I can't tell you what
11 the white vote percentage was for those
12 candidates.

13 Q. Is that because you didn't calculate them?

14 A. I'm sure that I looked at them. I
15 looked -- I mean, it's publicly available, you
16 know, information. So I looked at it.

17 Oh. The percentage of vote. Percentage
18 of white voters. No. I'm sure I looked at --
19 it's in Spencer's report.

20 Q. But you didn't calculate those numbers?

21 A. I didn't calculate them independently, no.
22 I didn't do any independent analysis. This is all

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1 Spencer's data.

2 Q. And so there is no information in this
3 report about whether those candidates are white
4 candidates of choice, correct?

5 MR. HARRIS: Objection to the form of the
6 question.

7 You can answer.

8 A. Ask that question again.

9 Q. Is there anywhere you can point to in your
10 report that would identify whether Sessoms,
11 Davenport, Henley, or Jones were candidates of
12 choice of white voters?

13 A. I don't think so. I mean, not that I can
14 remember. I don't think so, though. I'm going to
15 go back to that last table.

16 I don't think specifically there is
17 anywhere in here that would identify the
18 percentage of vote that white -- that a candidate
19 got from white voters.

20 Q. And you don't know whether -- other than
21 what's in your report, you can't remember whether
22 they're candidates of choice of white voters?

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1 A. I'd have to -- no. I'd have to go back
2 and look at what Spencer reported.

3 Q. So you'd have to look at Dr. Spencer's
4 report?

5 A. Correct. I was hired to analyze his
6 report, so that's really what I did. I mean, I
7 didn't do anything else.

8 Q. All four: Sessoms, Davenport, Henley, and
9 Jones, are white, correct?

10 A. I believe that's true. I don't know how
11 they identify themselves, but I believe that's
12 true.

13 Q. In the 2018 at-large election the
14 candidate Bright was not a candidate of choice of
15 minority voters, correct?

16 A. Bright?

17 MR. HARRIS: Object to the form of the
18 question.

19 You can answer.

20 A. So according to Spencer's analysis, as
21 reconfigured in this table, Bright in 2018 has no
22 black or minority cohesion.

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1 Q. So Bright was not the candidate of choice
2 for minority voters, right?

3 MR. HARRIS: Object to the form of the
4 question.

5 You can answer.

6 A. I mean, all I'm comfortable in saying is
7 that there's no black or minority cohesion.

8 Q. In the 2018 at-large election Allison
9 White was the second candidate of choice of
10 minority voters, correct?

11 MR. HARRIS: Object to the form of the
12 question.

13 You can answer. It's Linda Bright.

14 MS. HARLESS: I didn't say Bright. I said
15 Allison White.

16 MR. HARRIS: I thought you said Bright.
17 I'm sorry.

18 Q. In the 2018 election Allison White was the
19 second candidate of choice of minority voters,
20 correct?

21 A. I would have to actually look at the
22 results to know. I mean, I assume you're basing

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1 that on Spencer's report, on his analysis.

2 Q. I'm asking you.

3 A. I'd have to look. I can't remember. I
4 mean, I'd have to look at his -- at his tables.

5 Q. Are you aware of whether White won an
6 at-large seat in 2018?

7 A. White did not win, as far as I know,
8 because the two candidates that did win are not
9 named White.

10 Q. But you're not aware of whether White
11 was --

12 A. I'm not -- I cannot remember, as I sit
13 here at this moment, what White's percentage of
14 white vote was from Spencer's analysis.

15 Q. All right.

16 A. I think I said that right. I'm not aware
17 of what White's percentage of the white vote was
18 according to Spencer's analysis. I can't remember
19 if I said white -- white twice.

20 MR. HARRIS: You did.

21 Q. So in order for you to know the percentage
22 of any candidate's level of support, you'd need to

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1 look at Dr. Spencer's report?

2 A. That was what I was hired to do. I was
3 just hired to analyze Spencer's report.

4 Q. Is that a yes?

5 A. That's a yes.

6 Q. What is equivalence testing?

7 A. Equivalence testing is when you -- it's a
8 statistical procedure where you're attempting to
9 determine whether two -- two groups of something,
10 people mostly, are equivalent in some way,
11 whatever way or category you're trying to measure
12 them, whether you're trying to determine whether
13 two groups respond to a drug in the same way, for
14 example, by doing randomized testing.

15 Q. Have you ever used equivalence testing as
16 a statistical technique?

17 A. No.

18 Q. Would you agree that equivalence testing
19 is a fairly common statistical technique?

20 A. No. It's there. I mean, it's there.
21 It's there, but there are far more common
22 statistical techniques. Ecological inference is

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1 far more common --

2 THE REPORTER: Sir, could you say that
3 again?

4 A. Sorry. Slower?

5 Q. Were you done?

6 A. I can't remember --

7 THE REPORTER: Ecological --

8 A. Ecological inference is far more common.
9 Correlation analysis is far more common.
10 Regression analysis is far more common. In the
11 context of Political Science, which is my
12 discipline, it's relatively new. In the context
13 of Political Science, Economics, Sociology, it's
14 actually relatively new.

15 Q. Isn't equivalence testing frequently
16 taught?

17 A. It is not frequently taught. It's
18 certainly not taught at the undergraduate level.
19 Far more complex than that. I would say it's
20 probably taught at -- in graduate programs that
21 have pretty serious methodological sides to them
22 and in what I would consider to be advanced data

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1 analysis courses in those graduate programs.

2 So I bet you could come out of -- just
3 taking my discipline, Political Science, you could
4 probably come out of there -- there are about 98,
5 99 Ph.D. programs in Political Science. You could
6 probably come out of 60 or 70 of them and never
7 have the opportunity to take a class that taught
8 you equivalency testing.

9 Q. In statistical applications equivalence
10 testing is used to draw inferences from observed
11 data, correct?

12 MR. HARRIS: Object to the form of the
13 question.

14 You can answer.

15 A. Ask that again.

16 Q. In the statistical applications
17 equivalence testing is used to draw inferences
18 from observed data, correct?

19 A. I think that's correct.

20 Q. Can you describe in detail how equivalence
21 testing works?

22 A. I can describe generally how it works.

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1 Q. Okay.

2 A. And I just did earlier. The equivalence
3 testing is most -- the way I understand it, most
4 commonly used would be in randomized trials, like
5 in medicine where you -- where you randomize --
6 you know, you take a group of 100 patients and you
7 randomly give 50 percent of them the drug you're
8 testing, you give 50 percent the placebo, and you
9 look for responses.

10 And you conduct an equivalency test to
11 determine -- this actually would be a test of the
12 placebo effect actually. Attempt to determine
13 whether there is an equivalent reaction.

14 Q. Why do you think it's used in randomized
15 trials in medicine?

16 A. That's my -- that's sort of where -- as I
17 think -- as I think about how -- where I've
18 understood or where I've heard about equivalency
19 testing, that's where I've most commonly heard
20 about it. I think that's why. It's just not --
21 it is not common in Political Science, I'll tell
22 you that.

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1 Q. That's not what I meant by my question, so
2 let me try again.

3 A. Right.

4 Q. Why is that a method that is useful for
5 randomized trials in medicine?

6 A. Oh. In that example, it might tell you
7 the effects of a placebo effect, you know. And so
8 it might be helpful to know that people who think
9 they are taking a drug when they're really not
10 have a similar or not or dissimilar reaction
11 because it might help you understand the
12 psychological effects of thinking you're taking
13 medicine when you're not.

14 Q. Why is it used -- why is equivalence
15 testing used often in randomized trials in
16 medicine rather than another method, like
17 regression?

18 A. Well, I think it's -- I think it's a
19 matter of disciplines. You know, different
20 methods and statistical procedures sort of take
21 hold in disciplines and not in other disciplines
22 for whatever reasons, you know, for all sorts of

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1 reasons. And so those -- those methodologies as
2 they become more common in a discipline and
3 demonstrate their usefulness in understanding
4 human behavior then sometimes will migrate over to
5 other disciplines. You know, so that's really it.
6 It's just -- it's really the social behavior of
7 academics in their silos of disciplines.

8 Q. Do you have an opinion about the use of
9 equivalence testing to determine the voting
10 preferences of black, Hispanic, and Asian voters?

11 A. Only that when I read Spencer's rebuttal I
12 just had never seen it used like that before in
13 a -- in a -- in a case like this.

14 I did a little bit of searching to
15 determine whether it was -- whether I could find
16 it in any other kind of court cases, and I
17 couldn't find it anywhere.

18 He did include a reference to the -- to
19 the article that seemed to motivate or inspire his
20 analysis. It was published, if I'm remembering
21 right, in October 2018, so it's less than a year
22 old.

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1 So the -- the problem is that there is not
2 a lot of academic research support behind it in
3 Political Science, in Economics and Sociology,
4 that -- you know, those Social Science
5 disciplines.

6 So, you know, that's -- I mean, that's my
7 opinion. It's, like, in my world if you're going
8 to use a statistical procedure, especially in a
9 case like this where you're trying to -- you know,
10 you want a city to change the way it elects its
11 City Council members, you would want to use a
12 method that has a body of research behind it,
13 where it's been replicated, where it's been, you
14 know, tested in various scenarios to determine its
15 viability to demonstrate itself in various
16 scenarios.

17 You know, ecological inference is like
18 that. When Gary King came out with ecological
19 inference 15, 18 years ago now, maybe 20 years ago
20 now, it was sort of an innovation in Political
21 Science. You know, the idea that you could -- you
22 know, you could infer from an individual to a

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1 population and a population to an individual was
2 sort of an innovation to Political Science, and so
3 lots of people were excited about it. But as a
4 discipline we understood it had to be replicated,
5 it had to be tested, it had to be -- it had to
6 demonstrate its viability.

7 And so I would look for this -- I would
8 want this to be similarly put through the ringers,
9 if you will, in academic research. I don't know
10 that it -- it was published 10 months ago. I
11 don't know that it's been replicated in
12 publication yet.

13 Q. So besides that, do you have any other
14 opinions about the use of equivalence testing to
15 determine the voting preferences of black,
16 Hispanic, and Asian voters?

17 A. No. Just that it's -- just that -- just
18 that I would -- I lack confidence in it because my
19 confidence would come from the body of scholars
20 who would test it and put it through the ringers
21 and demonstrates its viability.

22 Q. Have you done any analysis of

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1 Dr. Spencer's equivalence testing?

2 A. I was not hired to do any -- any analysis
3 on his rebuttal. I mean, I read it, so...

4 Q. Are you offering any opinions on the
5 estimates that are produced by the equivalence
6 testing?

7 A. Offering them to who? I mean, I have
8 opinions, but...

9 Q. You're an expert in this case. The way we
10 phrase it is are you offering an expert opinion.

11 A. Okay.

12 Q. So are you offering any expert opinions in
13 this case on the equivalence testing estimates
14 produced by Dr. Spencer?

15 A. My opinion is that it's -- by doing this
16 Spencer has laid a plank out and then laid another
17 plank out on top of that and walked out on it. If
18 we're going to -- can I borrow a pen? Can I write
19 on a court document?

20 MR. BOYNTON: Just write on a piece of
21 paper.

22 Q. You can write on the exhibit. I can get

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1 you a pen.

2 MR. BOYNTON: It might be cleaner to do on
3 a clean piece of paper.

4 MS. HARLESS: It's fine with me if he
5 writes on the back of that.

6 A. If we -- so if we were going to -- so,
7 typically, when you're doing statistical analysis
8 you're looking for a point estimate. And what
9 Spencer has done is he's essentially said -- and,
10 you know, so if -- if this is, you know, black and
11 this is Asian, we would say, well, that's far
12 apart. Right? Spencer has said, well, if they
13 overlap at all over here, we're going to consider
14 them the same.

15 So it could be the case that 25 percent of
16 Asian voters supported the candidate and 80
17 percent African American supported the candidate.
18 And Spencer would say forget that 75 percent of
19 these voters didn't support that candidate, we're
20 going to consider that cohesion. And that, in my
21 mind, is walking out on a plank with another plank
22 put out beyond it.

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1 Q. Are you basing this on the equivalence
2 testing?

3 A. Yeah. That's what the -- that's what he's
4 doing in that equivalency testing.

5 Q. So have you done any analysis of the
6 actual estimates he produced?

7 A. This is my read of his rebuttal report,
8 not any independent analysis that I've done.

9 Q. So you've done no independent analysis?

10 A. Correct.

11 Q. Will you just mark with a star where you
12 put -- you mentioned here is where Spencer is.
13 Just so we can understand that later --

14 A. Yeah.

15 Q. -- can you put a star there?

16 A. Sure.

17 (Witness complied.)

18 This is a conceptual rendering.

19 MR. BOYNTON: You should have been a
20 lawyer.

21 A. This is not based upon any individual
22 election. That's sort of a conceptual rendering

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1 of what I -- of what in many cases Spencer is
2 doing.

3 MS. HARLESS: Can we mark this as Exhibit
4 2?

5 (Exhibit 2 was marked and
6 attached to the transcript.)

7 A. I'll tell you what else bothers me
8 about -- since we're talking about the equivalency
9 testing, what else bothers me about it is I don't
10 know why his original -- his original report and
11 his rebuttal report are almost two different
12 reports. And I don't know why if the equivalency
13 testing -- I don't -- I don't know why he produced
14 two different reports. I mean --

15 Q. Do you understand that it is common
16 practice for plaintiffs' experts to produce
17 rebuttal reports?

18 A. I know that. But my -- my impression is
19 that the plaintiff should defend their report in a
20 rebuttal, not produce a completely different
21 report.

22 Q. What is that understanding based on?

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1 A. General knowledge. General -- a general
2 sense of how it should work. I mean, certainly
3 not any expertise in terms of having done this
4 before. That's just my -- I mean, when I read
5 it -- so when Chris sent it around and I read it,
6 I thought, well, this is a completely different
7 report.

8 Q. And you've never been an expert before,
9 correct?

10 A. (Moved head from side to side.)

11 Certainly not in a legal case.

12 Q. And you've never produced a rebuttal
13 report before, correct?

14 A. Correct. Yes. So that's just my opinion.
15 I just -- my opinion was rather than defending
16 what he did initially, he completely shifted and
17 did something else and in the context of doing
18 that changed his results. I mean, there were --
19 there were elections in his initial report where
20 he said this candidate was the minority candidate
21 of choice and lost and, then, in his rebuttal --
22 in his response, rebuttal to my response, he

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1 changed that, and so it's a completely different
2 analysis.

3 Q. But you've done no independent analysis of
4 the equivalence testing estimates, correct?

5 A. Correct.

6 Q. All right. Let's look at page 20 of your
7 expert report.

8 A. If Virginia Beach wanted to hire me to do
9 that, I would have done it, but...

10 Q. And I'm looking at Table 8.

11 A. Table 8. Okay. Got it.

12 Q. What is Table 8?

13 A. Table 8 is Census Bureau Estimates of
14 Virginia Turnout Among Black, Asian, and Hispanic
15 Voters CVAP, 2008 to 2018.

16 Q. Did you calculate margins of error for the
17 point estimates in Table 8?

18 A. No. They're not reported here.

19 Q. Why not?

20 A. Because I didn't think I needed them.

21 Q. You could have calculated margins of
22 error, correct?

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1 A. Uh-huh.

2 MR. HEBERT: Is that a yes?

3 A. Yes. I'm sorry. Yes.

4 Q. A water-drinking yes.

5 A. Yeah.

6 Q. Let's look at page 21.

7 A. Clearly lawyers speak differently than the
8 rest of us. I'm just not used to that.

9 Q. In Table 9 you are reporting estimates of
10 the share of the Asian and Hispanic vote for five
11 candidates, correct?

12 A. Correct. That is five candidates who
13 Spencer's results indicate satisfy Gingles prong 2
14 and 3.

15 Q. Did you calculate margins of error for the
16 Asian and Latino vote estimates in Table 9?

17 A. No.

18 Q. But you could have calculated margins of
19 error, correct?

20 A. Yeah.

21 Q. Why didn't you?

22 A. I didn't think I needed them.

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1 Q. Let's go to page 23. And I'm looking at
2 the paragraph underneath the table.

3 A. Yep.

4 Q. So here you note that the estimates for
5 Asian plus Hispanic support reported here involve
6 a set of assumptions about what share of the all
7 minority vote are from these two groups and what
8 share are from African Americans. It is an
9 informed and parsimonious estimation.

10 Do you see that?

11 A. Yep. Yes.

12 Q. What do you mean when you say it is an
13 informed and parsimonious estimation?

14 A. So it's based upon the only known that we
15 can know is what proportion they are of the
16 population, what proportion Asians are of the
17 population, what proportion Hispanics are of the
18 population, African Americans, and so --

19 Q. Can I just ask to clarify, are you talking
20 about the population of Virginia or Virginia
21 Beach?

22 A. Virginia Beach. Sorry.

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1 And so it's informed in the sense and
2 parsimonious in the sense that that's what we can
3 know. So if you -- if you're going to -- if
4 you're going to produce -- if you're going to do
5 some analysis that is going to assume, because you
6 can't know, then the safest assumption in my mind
7 is to say, you know, if -- if Asians are 8.8
8 percent of the population, then let's assume they
9 turn out at their proportion of the population.
10 And so that's what I mean by informed and
11 parsimonious.

12 Q. What are the assumptions that you used to
13 arrive at these estimates?

14 A. It's that assumption. It's the assumption
15 that a group votes at their -- at their population
16 percentage.

17 Q. Any others?

18 A. No. No.

19 Q. So, then, how did you apply this
20 assumption that groups vote at their population
21 percentage in your analysis?

22 A. So if you want to go back -- if you want

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1 to go back -- I just have to get to it. So I
2 start with this hypothetical -- I'm sorry. If you
3 look on page 17, the last paragraph, I start with
4 this hypothetical which demonstrates that --
5 demonstrates in the hypothetical that you could
6 have -- if you take African American, Asian, and
7 Hispanic, and white voters, and you -- you can
8 create a scenario where African American voters
9 can support a candidate, you know, at -- in this
10 case -- in this case 10 African Americans, five
11 Asians, five Hispanics, and 20 whites --

12 THE REPORTER: Sir, if you could say that
13 again.

14 A. Sorry. Yeah. You're right, I read fast.

15 I'll just say it this way. I created a
16 hypothetical where African Americans
17 overwhelmingly supported a candidate, Asians and
18 Hispanics didn't overwhelming support that
19 candidate. And, yet, when you combine African
20 American, Asian, and Hispanics, it looks like
21 there is majority support for a candidate.

22 To demonstrate that, it is very likely in

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1 many of these races where it's African American
2 voters that are driving what appears to be
3 minority support for a candidate, in that it isn't
4 a cohesion between or among African Americans,
5 Asians, and Hispanics; it's actually African
6 American voters driving the appearance of a
7 cohesion.

8 So that hypothetical begins what I then
9 walk through with several of these elections,
10 which is to demonstrate, using Spencer's data
11 where he -- where he -- where he shows black
12 support and then all minority support. Using
13 those cases where there is a significant drop-off
14 between black support and all minority support,
15 that was what keyed me off to this was how could
16 you have black support at 80 percent for a
17 candidate and, then, all minority support dropped
18 down pretty significantly -- I'm making this up
19 because I'm not looking at a table -- but drop
20 down to, like, 40 percent or 60 black support and,
21 then, all minority support is at 30 percent?

22 Oh. Well, what that means is that Asian

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1 and Hispanic voters aren't supporting that
2 candidate at the same rate that African American
3 voters are supporting that candidate. So
4 something is going on here. And that's what keyed
5 me to do this analysis. And --

6 Q. So I want to know how you did the
7 analysis. That's what I'm asking.

8 A. Well, I can read all of this for you. All
9 right. So I'll read slowly.

10 Q. What page?

11 A. I'm on page 18. I'll read it.

12 Q. You don't need to read through it. If you
13 tell us where it is.

14 A. On page 18, that first -- that big
15 paragraph in the middle, The simplest and most
16 obvious evidence of a disparity -- that
17 paragraph -- in preferences between black voters
18 and other minority groups can be seen when Spencer
19 shows a majority of African Americans supporting a
20 candidate but a majority of all minorities failing
21 to support that candidate.

22 And I -- and I point out there are two

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1 elections where this happens: 2014 Rose Hall with
2 Cabiness. And I will note that's one that he
3 changed from his initial report to his second
4 report. So I think he conceded that essentially
5 by changing it. And 2008, Kempsville with Jackson
6 and Flores.

7 And, then, I go on and explain how -- how
8 the -- what I did essentially to demonstrate that.

9 Q. What statistical procedure did you use to
10 deconstruct Asian and Hispanic voter support from
11 black voter support?

12 A. We -- so -- statistical procedure?
13 Addition, subtraction, division. It wasn't
14 anything complex. I mean, it was -- in order to
15 be most accurate I would want to read it as it --
16 as it's shown here.

17 Q. So I'm just having difficulty, looking at
18 this paragraph alone, understanding exactly what
19 you did to get the analysis.

20 A. Look at the first paragraph on page 19.
21 I'll read it just so we've got this. And I'll
22 read it slowly.

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1 With Cabiness receiving 51.7 of the
2 African American vote but only 37 percent of the
3 overall minority vote, it means that his support
4 from Asian and Hispanics was actually far less
5 than 37 percent. Consider, for example, that if
6 the overall minority vote (all minority) was half
7 from black voters and half from Asian plus
8 Hispanic voters, Cabiness would have netted 51.7
9 percent of the black vote but only 22.3 percent of
10 the combined Asian and Hispanic vote since (51.7
11 plus 22.3 divided by 2 equals 37). Thus, while
12 Cabiness gets a bare majority of the African
13 American vote, he is soundly rejected by Asian and
14 Hispanic voters.

15 Then I go -- in the next paragraph is
16 where I explain, but, of course, it isn't 50 and
17 50 because the majority -- the African American
18 voting population is larger than the Asian and
19 Hispanic voting population. Right?

20 And so the black vote constitutes a little
21 over 60 percent; 60.3. And the Asian/Hispanic
22 vote is 6.6 percent for Asian and 6.1 percent for

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1 Hispanic. And so that paragraph details what I
2 think is a more -- not the hypothetical in the
3 first paragraph or the paragraph above where it's
4 50/50 but a more realistic assessment where it's,
5 you know, the African American population is much
6 larger than the Asian and Hispanic population.

7 Q. Did you disclose the calculations you used
8 to produce these numbers anywhere?

9 A. Yeah. The only calculations that I -- the
10 only calculations that I did are all in here,
11 spelled out in each paragraph. And the equation
12 is on footnote 22 there.

13 So every election that I did this for,
14 where I had questions about, each -- I, basically,
15 did it in each paragraph. So the paragraphs that
16 follow are in there.

17 Q. Did either Bullock, Brace, or Morrison
18 verify this analysis?

19 A. So I assume --

20 MR. HARRIS: To the extent you're asking
21 about a conversation that occurred in the presence
22 of the attorneys, we're going to object to that.

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1 MR. HEBERT: We're not.

2 MR. BOYNTON: So outside of that.

3 A. Outside of that, no.

4 Q. Did you send your report to Bullock,
5 Brace, or Morrison before it was submitted to the
6 plaintiffs?

7 MR. HARRIS: Again, same objection. To
8 the extent it implicates being sent to any of
9 those individuals through counsel or in discussion
10 with counsel, we would object to that as
11 attorney-client privilege and litigation work
12 product.

13 A. I will say this. I haven't communicated
14 with anyone outside of communicating through the
15 attorneys, except exchanging an email with Chuck
16 last night.

17 Q. What was that email?

18 MR. HARRIS: We're certainly objecting to
19 that because that is getting into what is clearly
20 prohibitive by the rules. And I can quote the
21 rule for that.

22 We've already talked about non-testifying

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1 experts and his opinions and facts known or can be
2 held of those non-testifying experts are not
3 discoverable. And that's Rule 26(b)(4)(D)(ii).
4 So I would instruct him not to answer that
5 question.

6 MR. BOYNTON: We're back to where I think
7 we left off a while ago, where we can identify the
8 person to you, which we've done. We've told you
9 there was a conversation. But that's the end of
10 what we're going to give you on that.

11 MR. HEBERT: Okay. I understand what
12 you're saying.

13 Q. Is there any other time you've spoken to
14 Bullock by yourself without the attorneys present?

15 A. No.

16 Well, to be perfectly honest, 15 years ago
17 Chuck was on a panel at a conference where I
18 presented a paper, so...

19 MR. BOYNTON: Not in the context of this
20 case?

21 A. Not in the context of this case, no, but
22 just to be honest.

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1 Q. I'm going to go back to the paragraph
2 under Table 10 on page 23.

3 A. Okay.

4 Q. And here you continue on to say, Of
5 course, alternative values for African Americans
6 and Asian plus Hispanic vote share to reflect
7 other years and other conditions can be estimated,
8 but results more favorable to plaintiffs can only
9 be estimated if the distribution of the African
10 American vote share is assumed to be less than
11 60.3 percent.

12 Do you see that?

13 A. Yes.

14 Q. Where does the 60.3 percent figure come
15 from?

16 A. So if you come back to page 19, that
17 middle paragraph, there is a sentence. Thus,
18 blacks constitute 60.3 percent of the combined
19 African American-Asian-Hispanic potential
20 electorate.

21 Q. I'm asking where did you get that number?

22 A. So that's what I was -- I mean, that's

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1 what I described up above here. The combined vote
2 for Asians plus Hispanics is almost certainly less
3 than the number of votes cast by African
4 Americans. Using plaintiffs' own data, according
5 to the Lichtman report African Americans make up
6 19.3 percent of the CVAP, Asians are 6.6 percent,
7 and Hispanics are 6.1 percent. Thus, blacks
8 constitute 60.3 percent of the combined African
9 American-Asian-Hispanic potential electorate.

10 Q. In your opinion, why would the black vote
11 share have to be less than 60.3 percent in order
12 to "be more favorable to plaintiffs"?

13 A. Because in the context of those three
14 racial and ethnic groups it's a zero sum game.
15 You can't be more than 60.3 percent without taking
16 some of that percent away from Asians and
17 Hispanics. And Asians and Hispanics can't be more
18 than their percent without taking some away from
19 African Americans in the context of what is known.
20 And that is what is known right here, which is,
21 according to Lichtman's report, 19.3 percent of
22 the CVAP is Asian, Hispanic, and black. I mean,

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1 that's -- so that's where that comes from.

2 Q. If Hispanics gave 25 percent of their
3 votes to a black candidate and five to 15 to a
4 white candidate, would you agree that the black
5 candidate was the candidate of choice of Hispanic
6 voters?

7 A. All right. Say that again. If --

8 Q. If Hispanics gave 25 percent of their
9 votes to a black candidate and five percent to 15
10 other white candidates, would you agree that the
11 black candidate was the candidate of choice of
12 Hispanic voters?

13 A. I don't know that I would agree to that.

14 Q. Why?

15 A. Because two-thirds of the -- of that vote
16 didn't go to the black candidate. And I just
17 don't know how you can say a quarter of the vote
18 constitutes a preference.

19 Q. In the hypothetical we just discussed, who
20 was the candidate of choice of Hispanic voters?

21 A. I think in a situation where you have
22 multiple candidates, it is also possible for there

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1 not to be a candidate of choice.

2 Q. So in this hypothetical you think there is
3 no candidate of choice?

4 MR. HARRIS: Object to the form of the
5 question.

6 You can answer it.

7 A. In that hypothetical I would argue that
8 the candidate of choice isn't clear.

9 Q. Are there any reasons why the vote share
10 estimates you provide for Asian and Latino voters
11 in Virginia Beach may not be accurate predictors
12 of candidate preference?

13 A. Are there any reasons why -- say that
14 again. I'm just processing what you -- what you
15 asked me.

16 Q. Are there any reasons why the vote share
17 estimates you provide for Asian and Latino voters
18 in Virginia Beach may not be accurate predictors
19 of candidate preference?

20 A. I can't think of any sort of off the top
21 of my head.

22 Q. All right. Let's move to Section III of

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1 your report or -- Section IV.

2 A. Page 25?

3 Q. Section IV.

4 MR. BOYNTON: I'm going to take my leave
5 and leave it to my two capable colleagues.

6 Q. Section IV of your report offers opinions
7 on several totality of the circumstances factors,
8 correct?

9 A. Correct.

10 Q. You have not studied whether elected
11 officials in Virginia Beach have been responsive
12 to the particularized needs of the minority
13 community, correct?

14 MR. HARRIS: Objection to foundation and
15 form.

16 A. I don't know what that means.

17 Q. You can answer.

18 A. I don't know what that means.

19 MR. HARRIS: Sorry. It's legal-speak.
20 You can answer the question.

21 A. I have not -- all right.

22 So when you say I have not studied, what

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1 do you mean by that? Like, I have not conducted a
2 formal study?

3 Q. In your report you did not look at whether
4 elected officials in Virginia Beach have been
5 responsive to the particularized needs of the
6 minority community, correct?

7 A. I think that's correct.

8 Q. Okay. And in your report you have not
9 done any analysis comparing the adoption of
10 Virginia Beach's method of election with other
11 cities across the state?

12 A. I did do some analysis on that.

13 Q. Of why Virginia Beach chose its election
14 system?

15 A. So I can tell you why they chose their
16 election system. But I didn't -- but that didn't
17 seem relevant for me in this report.

18 Q. So that analysis is not in your report?

19 A. It is not in the report. I can tell you
20 why, if you want to know. It goes back to rural
21 urban representational issues.

22 Q. It's not whether I want to know or not.

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1 A. Okay.

2 Q. It's just whether it's in your report.

3 A. I'm a teacher by training.

4 Q. I know.

5 You'd agree, wouldn't you, that the way
6 election districts are drawn can determine which
7 candidates run for office?

8 MR. HARRIS: Object to the form of the
9 question.

10 You can answer.

11 A. I would agree -- I would agree that the
12 way election districts are drawn determines
13 whether somebody runs or doesn't run.

14 Q. Can determine --

15 A. Can determine.

16 Q. -- which candidates run for office?

17 A. I would -- I would agree with that.

18 Q. And you'd also agree that the way election
19 districts are drawn can determine which candidates
20 win, correct?

21 A. I would -- I mean, yeah, I would agree
22 with that. I don't think that -- I don't think

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1 it's all the time, but, yeah, there are times when
2 it can.

3 Q. And it is true that the electoral system
4 in place in a jurisdiction can impact voter
5 turnout, correct?

6 A. I would agree with that. There are many
7 cases around the country where you have 80 percent
8 red districts and Democratic turnout is really
9 low, 80 percent blue districts and Republican
10 turnout is really low.

11 Q. Is it your opinion that Latinos and Asians
12 in the State of Virginia have never faced
13 voting-related discrimination?

14 A. I have -- I don't want to ever -- I don't
15 want to ever say never because I don't know every
16 single, you know, issue that might have ever
17 happened in Virginia anywhere. I would say -- I
18 would be willing to say as a general rule, and
19 probably a pretty strong rule, Asians and
20 Hispanics have not faced the kind of voter
21 discrimination historically in Virginia that
22 African Americans did.

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1 But I would also say this. In my opinion,
2 my opinion, this case is about Virginia Beach.
3 And I will say in Virginia Beach I don't know of
4 an incidence where Asians or Hispanics have faced
5 voter discrimination.

6 Q. Did you do any kind of analysis looking
7 into that?

8 A. I actually did do some Google searching
9 trying to find incidences of voter discrimination
10 for Asians and Hispanics in Virginia Beach. I
11 couldn't find anything, I mean. It's just a
12 Google search, so...

13 And I will also say this. I've been
14 watching -- I've been watching politics in
15 Virginia Beach and Hampton Roads for almost 25
16 years, so I also just have the awareness and
17 knowledge of sort of what goes on politically in
18 Virginia Beach and in Hampton Roads generally.

19 So a lot of that is just sort of drawn
20 from my understanding of, you know -- like when
21 Lichtman tries to -- uses that case with Cheryl
22 Turpin and Rocky Holcomb, what he -- because he's

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1 not here, he doesn't know this area, what he
2 doesn't realize is there was massive push-back at
3 Rocky Holcomb and he lost largely because people
4 didn't like any -- any sort of racial implications
5 being drawn into an election.

6 Q. We'll get to that, I promise.

7 Besides doing some Google searches to look
8 for instances of voter discrimination against
9 Latinos and Asians in Virginia Beach, did you do
10 anything else.

11 A. I'm not aware -- no. And I'm not aware of
12 any, so...

13 Q. Are you aware of efforts that have taken
14 place in Virginia Beach since the 1990s to change
15 the election system to a single-member district
16 system?

17 A. Yes.

18 Q. Were you involved in those efforts in any
19 way?

20 A. No.

21 Q. Have you ever commented on those efforts?

22 A. Oh, geez. I mean, I've commented to

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1 newspapers and TV stations about Hampton Roads
2 politics for 20 years, so maybe. I don't know
3 if -- I can't name a specific time when I did.

4 Q. Is it your opinion that Latinos and Asians
5 in Virginia Beach specifically have never faced
6 any kind of discrimination?

7 MR. HARRIS: Object to the form of the
8 question.

9 You can answer.

10 A. All I can say is I don't know of a
11 particular instance where they -- where they did.

12 Q. And what analysis did you do to determine
13 whether Latinos and Asians have experienced any
14 kind of discrimination?

15 A. Again, like I said earlier, I don't know
16 of an incidence. And I did do a Google search to
17 try to find something, but I couldn't find
18 anything. So that's -- so if you want to call
19 that analysis, that would be my analysis.

20 Q. Would you call it an analysis?

21 A. No. I would call that a Google search.

22 Q. You have not done any analysis in this

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1 case on instances of past or present
2 discrimination against minorities in education,
3 employment, or health, correct?

4 MR. HARRIS: Object to the form of the
5 question.

6 You can answer.

7 A. No.

8 Q. In your report you did not provide
9 estimates of the turnout for Asian, black, or
10 Hispanic voters in Virginia Beach specifically,
11 correct?

12 A. I believe the closest I came -- let me go
13 back. The closest I came was Table 8. And so it
14 is in my report.

15 Q. And Table 8 is estimates of Virginia
16 turnout, correct?

17 A. Correct.

18 Q. Not Virginia Beach?

19 A. That is correct. Yep.

20 Q. So you did not provide estimates of the
21 turnout for Asian, black, or Hispanic voters in
22 Virginia Beach specifically, correct?

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1 A. Correct.

2 Q. I'd like you to go to pages 28 through 30
3 of your report. On pages 28 through 30 of your
4 report, Figures 1 through 3 contain Census Bureau
5 estimates of voter turnout among minority groups
6 in the State of Virginia from 2008 to 2018,
7 correct?

8 A. Correct.

9 Q. Why does Figure 1 have data from 2006 to
10 2018 while Figures 2 and 3 have data from 2008 to
11 2018?

12 A. It's a typo. It is 2008. It's just I
13 didn't put -- it's a typo.

14 Q. So you actually used 2008 to 2018?

15 A. It's 2008 to 2018 on all of them. But for
16 whatever reason, I have no idea how that typo
17 happened, but it's a typo.

18 Q. Okay.

19 A. The table clearly indicates it's 2008.
20 And it is 2008.

21 Q. In your expert report you disclose the
22 data you used to compile Figures 1 through 3 in

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1 your report, correct?

2 A. I believe that I did. It should be -- if
3 I did, it's in a footnote.

4 Q. Was it an Excel file?

5 A. So I created an Excel file. I created an
6 Excel spreadsheet to create these figures.

7 Q. And the Excel spreadsheet included point
8 estimates for Figures 1 through 3 of your report,
9 correct?

10 A. Correct.

11 Q. Mark this as Exhibit 3.

12 I had to tape the pages here together, so
13 it's pretty big. I had to get the whole -- and
14 we'll mark it. But I just want you to see it.

15 Mark that as Exhibit 3.

16 (Exhibit 3 was marked and
17 attached to the transcript.)

18 A. Sometimes I wish I had a screen this big
19 (indicating) so I could see it all at once.

20 Q. Dr. Kidd, you've just been handed what's
21 been marked as Exhibit 3 by the court reporter.
22 Have you seen this before?

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1 A. I have.

2 Q. What is this?

3 A. It is Census Bureau current population
4 survey estimates for various years. And, then, I
5 took parts of those and created other tables so
6 that I could create figures that tracked point
7 estimates and margins for turnout among Asians,
8 Hispanics, and African Americans.

9 Q. Did you compile this data or did somebody
10 else?

11 A. I did. No. I did.

12 Q. And just to confirm, this spreadsheet
13 contains the point estimates for Figures 1 through
14 3 in your report, correct?

15 A. Correct.

16 Q. Now you can put that aside.

17 A. All right. You'd agree, wouldn't you,
18 that Latino voters face a language barrier that
19 makes it more difficult to navigate the political
20 system?

21 MR. HARRIS: Objection to the form of the
22 question.

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1 You can answer.

2 A. What I would agree to -- what I would
3 agree with is that there are times when Latinos
4 face language barriers. There are, also, lots of
5 support organizations that help with those, so I'm
6 not convinced that they actually are 100 percent
7 limitations.

8 Q. But they do impact Latinos' ability to
9 navigate the political system, correct?

10 MR. HARRIS: Object to the form of the
11 question.

12 You can answer.

13 A. I mean, to the extent to which a language
14 barrier impacts your ability to navigate society,
15 yes.

16 Q. What are the instances you were thinking
17 of, the particular times you mentioned where a
18 language barrier can make it more difficult to
19 navigate the political system?

20 A. What are the specific -- that I was
21 thinking? I wasn't thinking about any. I was
22 just answering the question.

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1 Q. You said there are times. When?

2 A. Well, society generally. Like, there are
3 times when if you don't speak the language -- I
4 mean, at my university if you have a language
5 problem you'd struggle to figure out how to drop
6 and add classes. I mean, if you're struggling --
7 if you have a language problem, you're going to
8 struggle with how to go open a checking account or
9 register to vote if you don't have support from
10 organizations.

11 Q. Are you aware that voter registration
12 rates in Virginia for blacks, Latinos, and Asians
13 are lower than whites?

14 A. I am -- I am aware that -- I can't tell
15 you exactly what I've read or where I've read it,
16 but, yes, I do -- I am generally aware of that.

17 Q. Data disclosed with your report included
18 precinct level data on voter turnout and
19 demographics for Virginia Beach prepared by
20 Kimball Brace, correct?

21 A. Yeah.

22 Q. Did you look at that data?

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1 A. Not for this (indicating). I did look at
2 the data. I opened the Excel file.

3 Q. Just to be clear, when you say not for
4 this, do you mean for your report?

5 A. I'm sorry. Not for my -- not for these
6 figures that I put in there.

7 Q. Is it your opinion that an appeal used by
8 a campaign can only be an overt or subtle racial
9 appeal if the candidate using the appeal wins
10 their election?

11 A. All right. Ask that question again.

12 Q. Is it your opinion that an appeal used by
13 a campaign can only be an overt or subtle racial
14 appeal if the candidate using the appeal wins
15 their election?

16 A. No.

17 Q. Why not?

18 A. I mean, because an overt racial appeal --
19 I mean, I would hope most of the time people lose
20 when they do overt racial appeals. But an overt
21 racial appeal is an overt racial appeal. It
22 has -- whether the appeal is overtly racial or not

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1 has no bearing on whether -- is not defined by
2 whether the candidate wins or loses, I guess is
3 what I would say.

4 Q. And a subtle racial appeal is a subtle
5 racial appeal, as well, right?

6 A. A subtle racial appeal is a subtle appeal?
7 I mean, that's tautology.

8 Q. It's not -- you just said an overt racial
9 appeal is an overt racial appeal, it doesn't
10 matter if the candidate wins.

11 A. Oh. I see what you're saying. Okay. In
12 that context, yeah.

13 Now, what I would say about subtle versus
14 overt -- and it's almost like the -- I'm not a
15 lawyer here. Whoever the Justice was that said
16 you know pornography when you see it, what defines
17 a subtle versus an overt racial appeal, I think,
18 is probably -- the subtle part of it in particular
19 is probably arguable by different people.

20 Overt racial appeals, I mean, if you -- if
21 you get people into a room and get them to be
22 honest for a moment, most people probably would

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1 say if an overt racial appeal is overt. But I
2 think subtle racial appeals, I think people can
3 see things differently, legitimately and honestly.
4 So I don't -- that would be my clarification of
5 that.

6 Q. Is it your opinion that a racial appeal
7 itself must be successful in electing the
8 candidate to be relevant to factor 6 of the
9 totality of the circumstances test?

10 A. Is it my -- say that again.

11 Q. Is it your opinion that a racial appeal
12 itself must be successful in electing the
13 candidate to be relevant to factor 6 of the
14 totality of the circumstances test?

15 A. I guess I'm tripping up on the itself.
16 Like, is it -- is it itself --

17 Q. Is the racial --

18 A. -- a definer of --

19 Q. Is the racial appeal the reason why the
20 candidate won?

21 A. I don't -- no. That isn't -- I wouldn't
22 say that's my opinion.

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1 Q. In the 2017 election between Rocky Holcomb
2 and Cheryl Turpin, Turpin won by only 389 votes,
3 correct?

4 A. If you say so, but I'm not looking at the
5 vote count right now. I know she only won by a
6 few hundred votes.

7 Q. In his rebuttal -- you said you've read
8 the Lichtman rebuttal report, correct?

9 A. I did.

10 Q. I'm not going to mark this as an exhibit,
11 but I'll show it to you.

12 In his rebuttal report Dr. Lichtman points
13 to a 2008 flyer distributed during a City Council
14 race in support of candidate Sessoms as an example
15 of a racial appeal in Virginia Beach. Do you have
16 any opinions regarding that flyer?

17 A. I do, actually.

18 Q. Would you like to see it?

19 A. So this is -- this is an example where I
20 said a minute ago there's -- subtlety is in the
21 eyes of the beholder. Right?

22 So if -- so as a subtle racial appeal, I

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1 think you can have positive appeals and negative
2 appeals. So in this particular case what was --
3 what was illegal about this was there was no
4 ownership stamp as required by law. But it was --
5 it was Sessoms appealing for African American
6 support. Sessoms wasn't demeaning the President.
7 He wasn't altering the image of the President or
8 anything like that. He was appealing for African
9 American support.

10 My understanding of these flyers being
11 circulated were they were circulated in -- the
12 allegation is they were circulated in largely
13 African American voter precincts in an effort to
14 gain African American support.

15 So is it a subtle racial appeal? I could
16 see somebody saying it's a subtle racial appeal.
17 Is it a negative racial appeal? I would argue no.

18 Q. Even if it's not a negative racial appeal,
19 it's still a racial appeal? You'd agree to that,
20 correct?

21 A. I would agree it's a racial appeal. It's
22 appealing -- it is an appeal to African American

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1 voters to support a candidate who wants to align
2 himself with the President, who happens to be the
3 first black President in this country's history.

4 Q. So a racial appeal doesn't have to be
5 negative to be a racial appeal, correct?

6 A. I would say no, but I would also
7 distinguish between positive racial appeals and
8 negative racial appeals. I mean, look, if Will
9 Sessoms were an African American candidate for
10 Mayor of Virginia Beach and that flyer went out,
11 it would still be illegal because it didn't have
12 an ownership stamp. But it would not be
13 considered a racial appeal the same way that we're
14 talking about it as a racial appeal. And it
15 certainly, if it was, it would be considered a
16 positive racial appeal.

17 Q. But whether something is a positive or
18 negative racial appeal, you'd agree it's still a
19 racial appeal, right?

20 MR. HARRIS: Object to the form of the
21 question.

22 You can answer.

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1 A. I mean, yeah.

2 I will add -- let me add something else
3 here. The person -- so where I think Lichtman got
4 this was a local blogger who wrote -- I want to
5 say she wrote, like, four or five blog posts on
6 this. She was an African American, well-known in
7 Hampton Roads, political activist, nicest person
8 in the world. She wrote four or five blog posts
9 about this.

10 I went back and read those blog posts.
11 She doesn't call it -- she doesn't -- her focus is
12 on the, sort of, dirty politics of putting out
13 flyers that are -- that don't have the stamp of
14 ownership on them and stuff like that. But she's
15 not -- she's not, sort of, going after the racial
16 appeal -- negative racial appeal part of it, like,
17 for example, the firestorm that was created by
18 Rocky Holcomb's campaign when he put out that
19 flyer the latter stages of his race against Cheryl
20 Turpin four years ago -- two years ago.

21 I would also say in Lichtman's report --
22 if you look at the other side of the flyer and you

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1 read that, Sessoms is saying support me, I'll
2 do -- I'll do the things that you want done when
3 I'm in the Mayor's Office. That's a completely
4 different kind of appeal than a negative racial
5 appeal where you're trying to suppress vote or
6 you're trying to demoralize vote or you're trying
7 to, quite frankly, damage a candidate.

8 Q. This flyer is still using race to try to
9 appeal to a certain group of voters, correct?

10 A. Yeah. I mean, I think so because of
11 the -- because of the President's image on there,
12 yes.

13 MS. HARLESS: And for the record, we've
14 been talking about the flyer that's contained on
15 page 34 through 35 of Dr. Lichtman's rebuttal
16 report.

17 A. I don't know how you-guys do this every
18 day.

19 MR. HARRIS: Do you want to take five
20 minutes?

21 MS. HARLESS: We're almost done.

22 Q. In your report you haven't done any

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1 analysis of news articles regarding a change to
2 single-member districts in Virginia Beach,
3 correct?

4 A. I didn't do any analysis of them. I did
5 do a brief look to see if I could find news
6 coverage of it. And I found some. Didn't find a
7 lot. And then, of course, in Lichtman's response
8 he pointed out some other stuff that had been
9 published or had been in the newspaper or TV.

10 Q. Are you talking about news coverage of a
11 change to single-member districts or news coverage
12 of this lawsuit?

13 A. Oh. I'm talking about coverage of this
14 lawsuit. I'm sorry. I may be on a different
15 subject than -- you may have been on a different
16 subject than that.

17 Q. That's okay.

18 A. I'm not -- I didn't do any news analysis
19 search. I didn't do any searches for news of
20 coverage about the effort to change Virginia
21 Beach's voting -- the way Virginia Beach votes for
22 City Council races, if that's what your question

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1 was.

2 Q. Are you aware whether Sabrina Wooten was
3 the only black candidate for City Council in
4 Virginia Beach since 2008 to win a majority of the
5 white vote?

6 A. I probably am aware of that just looking
7 at Spencer's analysis.

8 Q. Is that yes?

9 MR. HARRIS: Objection to the form of the
10 question.

11 A. I mean, based upon Spencer's analysis,
12 I -- if that is correct in Spencer's analysis,
13 then I'm aware of it, but I would want to go back
14 and look at his analysis.

15 The only way I'm going to know who got
16 what percentage of white or black or Asian or
17 Hispanic vote or all minority vote is from
18 Spencer's analysis. I didn't do any independent
19 analysis on my own. I just analyzed Spencer's
20 report. So if that's what Spencer reports, then I
21 do know that.

22 Q. Since your report was submitted, have you

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1 discovered any errors?

2 A. I just discovered --

3 MR. HARRIS: Objection to form. You
4 mean -- we're talking about his report now, not
5 Dr. Spencer's report?

6 Q. I said since your report was submitted.

7 A. I just discovered an error. I put 2006 on
8 a figure when it should have been 2008. But, no,
9 I've not -- I don't know of any errors. I haven't
10 discovered any, so...

11 Q. As of today, does your report contain a
12 complete statement of your opinions in this case?

13 A. Well, no, because I have some strong
14 opinions about Spencer's rebuttal report, but they
15 aren't in my report. I read them. I have strong
16 opinions about them. I expressed some of them to
17 you.

18 My report is my full and complete
19 statement about my analysis of Spencer and
20 Lichtman's initial reports.

21 Q. Are there any other opinions you have
22 about Spencer's rebuttal report that you haven't

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1 already told me about today?

2 A. No. I think I've -- I think I've covered
3 them.

4 MS. HARLESS: Could we just take a
5 two-minute break?

6 MR. HARRIS: That would be fine. We'll
7 step out.

8 (A recess was taken.)

9 Q. Earlier today you testified that you did
10 not do your own ecological regression, ecological
11 inference, or homogeneous precinct calculations,
12 correct?

13 A. Correct.

14 Q. But you could have, correct?

15 A. Yeah. I can do EI and -- ecological
16 regression and ecological inference analysis.

17 Q. And you didn't?

18 A. Correct.

19 MS. HARLESS: No further questions.

20 MR. HEBERT: Thank you, Dr. Kidd.

21 MS. HARLESS: Thank you.

22 MR. HARRIS: Dr. Kidd, as a point of

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1 order, we ask all our experts to read and sign
2 their depositions to verify the accuracy. So
3 we're going to ask you to do that, as well.

4 THE DEPONENT: I've got to read all this
5 right now?

6 MR. HARRIS: No. Not right now. She'll
7 prepare the report and provide an errata sheet.

8 So we'll read and sign.

9
10 (Signature having not been waived, the
11 deposition of QUENTIN KIDD, Ph.D. was concluded at
12 12:35 p.m.)
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ACKNOWLEDGMENT OF DEPONENT

I, QUENTIN KIDD, Ph.D., do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct, and complete transcription of the
testimony given by me and any corrections appear
on the attached Errata Sheet signed by me.

(DATE)

(SIGNATURE)

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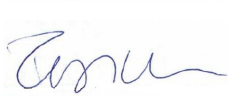
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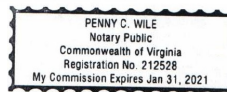
1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Penny C. Wile, RPR, RMR, CRR, the
3 officer before whom the foregoing deposition was
4 taken, do hereby certify that the foregoing
5 transcript is a true and correct record of the
6 testimony given; that said testimony was taken by
7 me stenographically and thereafter reduced to
8 typewriting under my direction; that reading and
9 signing was requested; and that I am neither
10 counsel for, related to, nor employed by any of
11 the parties to this case and have no interest,
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my notarial seal this 6th day of
15 October, 2019.

16 My commission expires: January 31, 2021.

17
18 



19
20 _____
21 NOTARY PUBLIC IN AND FOR
22 THE COMMONWEALTH OF VIRGINIA

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